

Competition and Tariff Commission

Zimbabwe

ANNUAL
REPORT

2012

This report details the operations and activities of the Commission during the 2012 calendar year based on its statutory mandates as provided for in the Competition Act [*Chapter 14:28*].

Activity and
Financial
Statement
Reports

11th September 2013

The Honourable Mr. Mike Bimha, 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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REPORT OF THE INDEPENDENT AUDITORS TO THE COMMISSIONERS OF COMPETITION AND TARIFF COMMISSION

1. STATUTORY MANDATES

The Competition and Tariff Commission (CTC) is a Statutory Body established under the Competition Act [Chapter 14:28]. The present Commission is a product of the merger in 2001 of the former Industry and Trade Competition Commission (ITCC) and Tariff Commission (TC). The ITCC had been established under the Competition Act, 1996 (No.7 of 1996) as a competition regulatory authority, while the TC had been established under the Tariff Commission Act [Chapter 14:29] as a trade tariffs advisory authority. Both the ITCC and TC had commenced operations in 1998. The merger of the ITCC and TC was provided for under the Competition Amendment Act, 2001 (No.29 of 2001), which also repealed the Tariff Commission Act [Chapter 14:29].

The CTC therefore has the twin mandates of implementation of Zimbabwe's competition policy and execution of the country's trade tariffs policy, with the primary objective of enforcing the Competition Act [Chapter 14:28].

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.

2. MISSION STATEMENT

2.1 VISION

“To be the leading advisory and regulatory authority on competition and trade tariffs nationally, regionally and internationally”

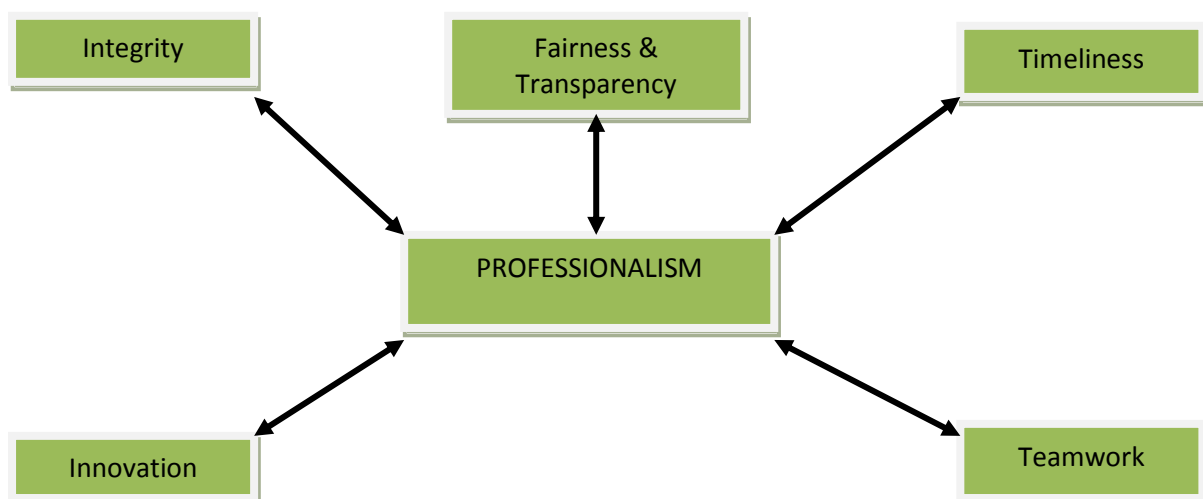
2.2 MISSION

- 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.

2.3 VALUES

- *Professionalism*
- *Integrity*
- *Fairness and transparency*
- *Innovation*
- *Timeliness*
- *Teamwork*

While members of our professional and administrative teams have individual skills and competencies required for the achievement of our objectives and goals, we commit to collectively achieve our common goals through effective sharing of information and reciprocal support.



3. CORPORATE GOVERNANCE

The Commission fully 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 Government of the Republic of Zimbabwe, through the Ministry of State Enterprises and Parastatals.

The Commission has a Board of Commissioners, which is its governing body and is responsible for the guidance of its affairs. The Board has both corporate governance and adjudicative functions under the Competition Act [*Chapter 14:28*]. The Commission also has a Directorate, which is primarily its investigative arm and administers its affairs on a day by day basis.

3.1 Board of Commissioners

Members of the Commission (the Commissioners) are appointed by the Minister of Industry and Commerce, in consultation with the President, 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”. The Commissioners are appointed on a part-time basis for three-year terms of office. The full statutory composition of the Board is 10 members.

Table 1: Members of the Commission in 2012

Member	Appointment Date	Term Expiration Date
Mr. Dumisani Sibanda (Chairman)	1 July 2009	31 July 2012
Mr. Samson Z. Dandira (Vice Chairman)	1 July 2009	31 July 2012
Mr. Peter Kadzere	1 July 2009	31 July 2012
Mrs. Chrysostoma Kanjoma	1 July 2009	31 July 2012
Mr. Anthony Mutemi	1 July 2009	31 July 2012
Mr. Fambaoga I. Myambo	1 July 2009	31 July 2012
Mr. Thulani M. Ndebele	1 July 2009	31 July 2012
Mrs. Constance Shamu	1 July 2009	31 July 2012
Mr. Godfrey H. Sigobodhla	1 July 2009	31 July 2012
Mrs. Varaidzo Zifudzi	1 July 2009	31 July 2012

The terms of office of all members of the Commission expired in July 2012. However, in terms of section 8(2) of the Competition Act [*Chapter 14:28*] “on the expiry of the period for which a member has been appointed, he shall continue to hold office until he has been re-appointed or his successor has been appointed: Provided that a member shall not continue to hold office under this subsection for a period exceeding six months”. Therefore, even though the terms of all the Commissioners expired in July 2012 they remained in office until the end of December 2012 when 8 of them were re-appointed by the Minister with effect from 1 January 2013 for a further period of three years.

Profiles of Members of the Commission in 2013



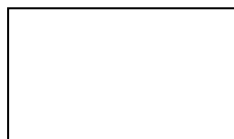
**Mr. Dumisani Sibanda
(Chairman)**

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.



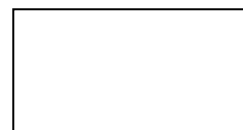
**Mr. Samson Z. Dandira
(Vice Chairman)**

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 26 years of progressive



**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

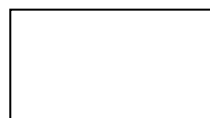
experience in the insurance, pensions and financial services sectors. He is currently the Managing Director of Kingdom Asset Management and sits on a number of boards.

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.



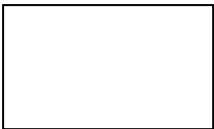
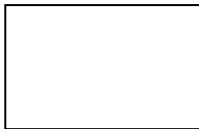
**Mrs. Constance Shamu
(Member)**

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. 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.

 Mr. Godfrey H Sigobodhla (Member) Mr. Sigobodhla holds a Bachelor of Administration degree and MSc Economics degree. He is a Public Administrator with over 20 years' experience in the civil service and is specialised in economic development, human resources management and change management. Currently, he is Director in the Ministry of Youth Development, Indigenisation and Empowerment.	 Mrs. Varaidzo Zifudzi (Member) Mrs. Zifudzi holds a Bachelor of Laws (Hons) degree from the University of Zimbabwe as well as a Master of Laws from the University of London (British Chevening Scholar). She has experience ranging from the corporate and public sector, financial services as well as private practice. She co-founded the setting up of Southern Trust Investment Services, an advisory services unit, in July 2008 and is currently the Managing Director.
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For the better exercise of its functions, the Board of Commissioners has established in terms of section 14 of the Competition Act [*Chapter 14:28*] four Standing Committees: (i) the Audit & Administration Committee; (ii) the Mergers & Restrictive Practices Committee; (iii) the Tariffs Committee; and (iv) the Legal & Enforcement Committee.

Table 2: Broad Functions and Membership of the Commission's Standing Committees

Standing Committee	Functions	Membership
Audit & Administration	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'.	Mrs. C. Shamu (Chairperson) Mr. P. Kadzere Mrs. C. Kanjoma Mr. A. Mutemi
Mergers & Restrictive Practices	Considers the Directorate's reports on preliminary investigations into restrictive and unfair business practices, as well as reports on examinations of mergers and acquisitions.	Mr. S. Z. Dandira (Chairman) Mr. P. Kadzere Mr A. Mutemi Mr. G. Sigobodhla Mrs. C. Shamu Mrs. V. Zifudzi
Tariffs	Considers the Directorate's reports on requests for tariff relief, investigations into unfair trade practices, and other issues related to trade tariffs.	Mr. T. M. Ndebele (Chairman) Mrs. C. Kanjoma Mr. F. L. Myambo Mrs. V. Zifudzi
Legal & Enforcement	Oversees compliance with the Commission's remedial orders and other decisions, as well as with laws and regulations.	Mrs. V. Zifudzi (Chairperson) 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.

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 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/Stakeholder Hearings as part of its full-scale investigations into competition and trade tariffs cases.

During the 2012 year under review, the Board of Commissioners met a total of 6 times, five times in Ordinary Meetings and once in a stakeholder hearing. All the Board's Standing Committees held meetings during the year, with the Mergers & Restrictive Practices Committee being the busiest, with four meetings, and the Tariffs Committee being the least active with only two meetings held.

Table 3: Number of Commission Meetings in 2012

Type of Meeting	Abr.	No. of Meetings
Ordinary Commission Meetings	OCM	5
Audit & Administration Committee	A&AC	3
Mergers & Restrictive Practices Committee	M&RPC	4
Tariffs Committee	TC	2
Legal & Enforcement Committee	L&EC	3
Public/Stakeholder Hearings	P/SH	1
Totals		18

Attendance at Commission meetings by members of the Commission during the year under review was fairly good, with most members having attended the meetings held. No quorum problems were experienced at any of the meetings.

Table 4: Commissioners Attendance at Commission Meetings in 2012

Member	OCM	A&AC	M&RPC	TC	L&EC	P/SH	Total
Total No. of Meetings	5	3	4	2	3	1	18
D. Sibanda	5	n/a	n/a	n/a	n/a	1	6
S.Z. Dandira	5	n/a	4	n/a	3	1	13
P. Kadzere	5	3	2	n/a	n/a	1	11
C. Kanjoma	4	0	n/a	1	n/a	1	6
A. Mutemi	5	3	4	n/a	n/a	1	13
F.L. Myambo	4	n/a	n/a	2	n/a	1	7
T. Ndebele	5	n/a	n/a	1	3	1	10
C. Tsomondo-Shamu	2	3	2	n/a	1	0	8
G. Sigobodhla	0	n/a	1	n/a	n/a	0	1
V. Zifudzi	5	n/a	2	1	3	1	12

Section 15 of the Competition Act [*Chapter 14:28*] provides that “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 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 members in connection with the business of the Commission or the committee, as the case may be”.

Table 5: Commissioners' Remuneration Levels in 2012

Member	Board Fees	Board Sitting Fees	Committee Sitting Fees	Transport Allowance	Airtime Allowance
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	(US\$/month)	(US\$/sitting)	(US\$/sitting)	(US\$/month)	(US\$/month)
Chairman	125	100	100	100	75
Vice Chairman	100	90	90	50	70
Other Members	80	80	80	50	45

During the year, the Commissioners' remuneration totalled US\$32 105, of which, US\$10 380 were for Board fees, US\$9 065 were for sitting fees, and US\$12 660 were for other allowances.

Table 6: Commissioners' Remuneration in 2012

Board Fees (US\$)	Sitting Fees (US\$)	Allowances (US\$)
10 380	9 065	12 660

3.2 Directorate

The Commission's Directorate of full-time officials is headed by the Director, who has the statutory responsibility in terms of section 17 of the Competition Act [*Chapter 14:28*] for "administering the Commission's affairs, funds and property and for performing any other functions that may be conferred or imposed upon him by this Act or that the Commission may delegate or assign to him". The Commission has delegated to the Director its investigative functions.

The Director is assisted in the performance of his functions by a management team comprising heads of the Directorate's three operational Divisions and one support Department.

Table 7: Members of the Directorate's Management Team in 2012

Management Team Member	Title	Grade	Division/Department	Years/ Months In Post
Alexander J. Kububa	Director	F1	Director's Office	14 years
Ellen Ruparanganda	Assistant Director	E2	Tariffs Division	6 years
Benjamin Chinhengo	Assistant Director	E2	Competition Division	5 years
Mary Gurure	Commission Secretary	E2	Legal & Corporate Services Division	2 years
Edgar Rindayi	Manager	E1	Finance & Administration Department	1 year

Under the general direction of the Director's Office, the Directorate's three operational Divisions and one support Department have the responsibility of executing the Commission's strategic plans and the day-to-day running of the organisation.

Table 8: Broad Functions of Directorate's Divisions and Department

Division/Department	Functions
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.

During the year under review, the Directorate's Division and Department were manned by professional and administrative staff with the requisite qualifications.

Table 9: Divisional/Departmental Staff Manning and Qualifications in 2012

Division/ Department	Staff Member	Position	Grade	Qualifications
Competition Division	Mr. Benjamin Chinhego	Assistant Director	E2	Masters in Business Administration
	Miss Cicilia Mashava	Chief Economist	D3	Bachelor of Science (Hons) Degree in Economics, and Masters Degree in Strategic Management and Corporate Governance
	Ms. Calistar Dzenga	Senior Economist	D2	Bachelor of Science (Hons) Degree in Economics
	Mr. Isaac Tausha	Senior Economist	D2	Master of Science Degree in Economics
	Mr. Dennis Chinoda	Economist	D1	Bachelor of Science (Hons) Degree in Economics
	Mr. Earnest Manjenga	Economist	D1	Bachelor of Science (Hons) Degree in Economics
	Miss Loveness Jayaguru	Law Officer	D1	Bachelor of Laws (Hons) Degree
Tariffs Division	Ms. Ellen Ruparanganda	Assistant Director	E2	Bachelor of Science (Hons) Degree in Economics, and Masters in Business Administration
	Mr. Charles Chipanga	Chief Economist	D3	Bachelor of Science (Hons) Degree in Economics
	Mrs. Chinyaradzo Phiri	Senior Economist	D2	Bachelor of Science (Hons) Degree in Economics, and Masters Degree in Development Studies
	Mr. Tawanda Katsande	Economist	D1	Master of Science Degree in Economics
	Mr. Tatenda Zengeni	Economist	D1	Bachelor of Science (Hons) Degree in Economics
Legal & Corporate Services Division	Mrs. Mary Gurure	Commission Secretary	E2	Bachelor of Laws (Hons) Degree, and Masters Degree in Women's

				Law
	Mrs. Rumbidzai Mutetwa	Legal Counsel	D3	Bachelor of Laws (Hons) Degree
	Ms. Letiwe Maphosa	Legal Officer	D2	Bachelor of Laws (Hons) Degree
	Ms. Fatima Chikosi	Public Relations Officer	D1	Diploma in Public Relations
Finance & Administration Department	Mr. Edgar Rindai	Manager	E1	Bachelor of Accountancy Degree
	Mr. Stephen Nyatsungu	Administration Officer	D1	Bachelor of Science Degree in Psychology
	Mrs. Rosemary Munyanyiwa	Human Resources Officer	D1	Diploma in Personnel Management
	Mr. Daniel Mwatsveruka	Sub-Accountant	C2	National Diploma in Accountancy
	Mr. Lararus Chiwara	Sub-Accountant	C2	'A' Levels
	Mrs. Prisca Chikotosa	Personal Assistant	C2	Secretarial Certificate
	Miss Angeline Malunga	Private Secretary	C2	Secretarial Certificate
	Mr. Ngonidzashe Jaure	Accounts Officer	C1	Associate Diploma in Accountancy
	Mrs. Selina Mabhureni	Registry Officer	C1	Diploma in Records Management
	Miss Priscilla Hove	Receptionist	C1	Receptionist Certificate
	Mr. Shame Murungweni	Driver/Messenger	B1	Class 2 Driver's Licence
	Mr. Tinashe Chivinge	Office Orderly	A1	'O' Levels

The Divisions and Department were however understaffed throughout the year under review, particularly as at the end of the year.

Table 10: Divisional/ Departmental Staff Strengths as at the End of 2012

Division/ Department	Position	No. of Posts On Establishment	No. of Posts Filled	Staff Strength
Director's Office	Director	1	1	100%
	Research Officer	1	0	0
	Totals	2	1	50%
Competition Division	Assistant Director	1	1	100%
	Chief Economists	2	1	50%
	Senior Economists	2	2	100%
	Economists	6	2	33%
	Law Officers	2	1	50%
	Investigators	5	0	0%
	Totals	18	7	39%
Tariffs Division	Assistant Director	1	1	100%
	Chief Economists	2	1	50%
	Senior Economists	2	1	50%
	Economists	4	1	25%
	Totals	9	4	44%
Legal & Corporate Services Division	Commission Secretary	1	0	0%
	Legal Counsel	1	0	0%
	Legal Officer	1	0	0%
	Public Relations Officer	1	1	100%
	Totals	4	1	25%
Finance & Administration	Manager	1	1	100%

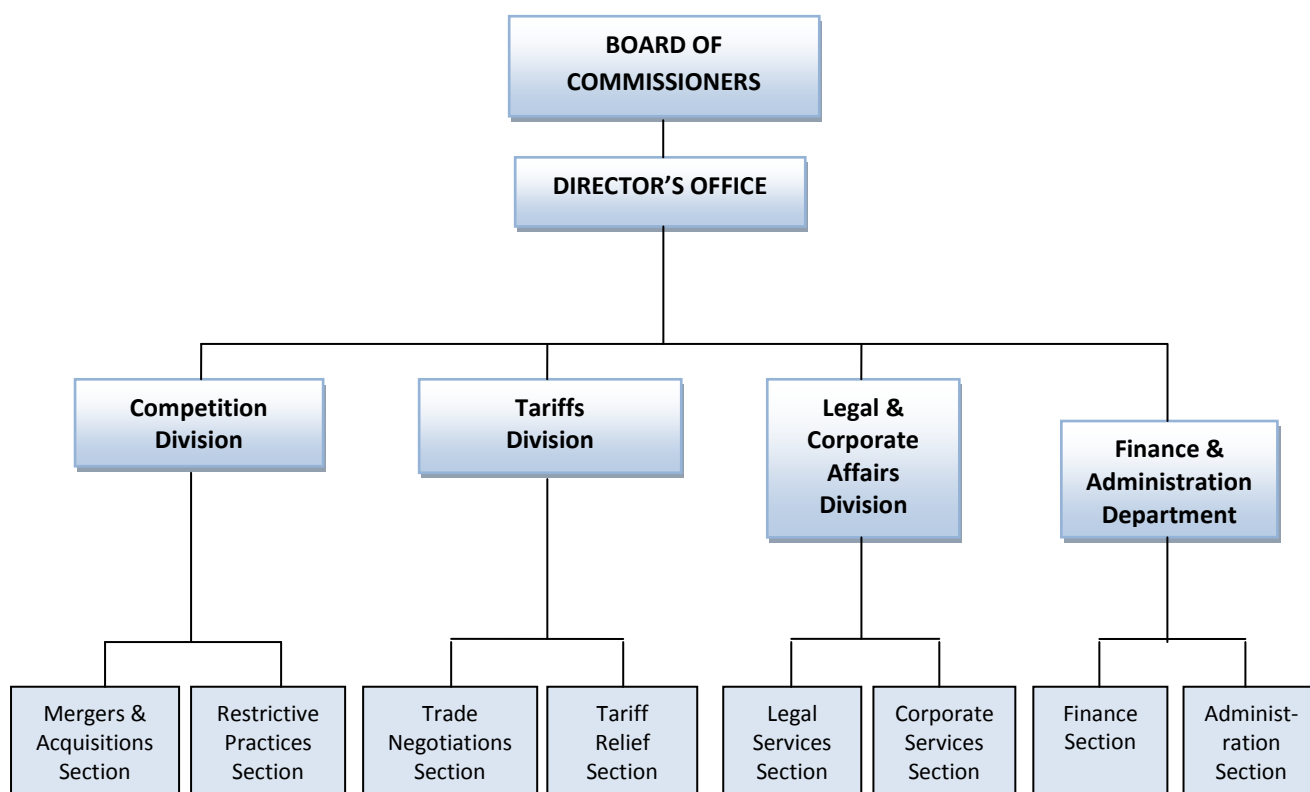
Department	Accountant	1	0	0%
	Administration Officer	1	1	100%
	Human Resources Officer	1	1	100%
	Sub-Accountants	2	2	100%
	Private Secretaries	3	2	67%
	Accounts Officers	2	1	50%
	Administrative Assistant	1	0	0%
	Registry Officer	1	1	100%
	Receptionist	1	1	100%
	Driver/Messengers	2	1	50%
	Office Orderly	1	1	100%
	Totals	17	12	71%
Directorate Totals		50	25	50%

Overall, the Commission's Directorate was operating at half of its establishment staff strength as at the end of the year under review. The most affected Division was the Legal & Corporate Services Division, which was operating at 25% staff strength, followed by the Competition Division (39%), and then by the Tariffs Division (44%). The Director's Office was operating at 50% staff strength, with the Finance & Administration Department at 71%.

3.3. Organisational Structure

The Figure below shows the organizational structure of the Commission during the 2012 year under review.

Figure 3: Organisational Structure of the Commission in 2012



4. CHAIRMAN'S STATEMENT

Introduction

The Commission had a very good year in 2012, in as far as its operations were concerned. Its statutory mandates and performance targets under the Three-Year Strategic Plan: 2010-2012 were met. Its visibility was increased, not only to big business but also to the consuming public.

Board of Commissioners

It was a very busy year for the Board of Commissioners. During the year, members of the Board attended a total of 18 Board and Committee meetings. A Stakeholder Hearing into the cotton industry was also held by Board members, as well as two stakeholder workshops, on public utilities and strategic planning. Furthermore, some members further actively participated in Geneva, Switzerland, in July 2012 at the tabling of the UNCTAD report on the peer review of Zimbabwe's competition policy and law, and at the peer review dissemination workshop in Harare in November 2012.

The capacities of members of the Board in adjudicating competition cases were further developed by exposing the members to international best practices. Some members attended the Twelfth Session of the Inter-Governmental Group of Experts on Competition Law and Policy (IGE) that was held in Geneva, Switzerland, in July 2012, as well as the UNCTAD Staff Training Workshop on Competition Policy and Law that was held in Harare in November 2012.

The term of the Board of Commissioners expired in July 2012, and was statutorily extended to December 2012. With the exception of two members who were retired at the end of the tenure after serving two terms, Commissioner Dandira and Commissioner Shamu, the other members were re-appointed for three-year terms.

I would like to express my profound gratitude to the contribution made by both Commissioner Dandira and Commissioner Shamu to the development of the Commission. The two Commissioners were active members of the Board. Commissioner Dandira was not only the Vice-Chairman of the Commission, he was also chairman of the Mergers & Restrictive Practices Committee. Commissioner Shamu was chairperson of the Audit & Administration Committee.

Activities

Details of the operations of the Commission during the year will be given in the Director's report below. However, it is worth noting that the Commission prioritised its operational work as a deliberate policy of assisting in poverty alleviation.

In the area of competition, concentration was made to cases that affected consumer welfare and business viability. The utilities sector was particularly chosen for that reason. The successful investigation last year of abuse of monopoly position in the electricity production and distribution services sector resulted in the Commission issuing during the year under review remedial orders aimed at addressing the plight of consumers of electricity, both private and commercial/industrial consumers. The recommendations made by the Commission in improving the efficiency of the electricity sector are also being implemented by the relevant policy makers. During the year under review, investigations were commenced into monopolisation in municipal services and telecommunications services, which all affect the consumer.

The implementation of competition policy should not be done in isolation to other socio-economic policies, but in coherence to those policies for facilitation of the country's economic development. While competition concerns should be paramount in reaching decisions on competition cases, public interest considerations should also be taken into account. The Commission during the coming year

will therefore undertake studies aimed at guiding and influencing policy formulation of a socio-economic nature. The establishment of a Research Unit in the Commission will thus be speeded.

In the area of trade tariffs, special attention was given during the year under review to identifying impediments to enterprise development and viability, with the aim of contributing to industry resuscitation. Again, employment creation and safe-guarding was the primary objective. The protection of local industry through the prevention and control of the unfair trade practices of dumping and subsidisation of foreign goods on the Zimbabwean market will also be given priority during the coming year.

Challenges

The Commission however faced formidable challenges in the undertaking of its operations during the year. The major challenge was the dearth of its workforce in both numbers and capacity. The retention and attraction of suitably qualified personnel was hampered by poor conditions of service in the Commission. The situation was aggravated by the Government freeze on recruitment in public organisations. Training and capacity building of staff in the highly specialised fields of competition and trade tariffs was hampered by the shortage of staff in the Commission, which gave staff little time off to attend training courses.

The other challenges faced by the Commission during the year were related to its relationship with sector regulators in the promotion of competition in regulated sectors and industries, and to the enforcement of the country's indigenisation law. While the increasing contesting of the Commission's competition decisions in law courts can be considered to be a challenge, it is welcomed for the creation of case law on competition and jurisprudence.

Acknowledgements

The support and assistance given to the Commission by its parent Ministry of Industry and Commerce during the year is acknowledged with appreciation. Many other Government Ministries, Departments, and Statutory Bodies also supported the Commission's programmes during the year. In particular, those organisations that agreed to be part of the Preparatory Committee of relevant Government Ministries and Departments that assisted the Commission in the mapping out of Zimbabwe's position at peer review exercise, and that form part of the successor Inter-Organisational Committee that is assisting the Commission in overseeing the effective implementation of the peer review recommendations. A number of Government Ministries and Departments also gave valuable support to the Commission in its stakeholder workshops on public utilities.

The above referred to public organisations included the following: (i) the Office of the President and Cabinet; (ii) the Office of the Prime Minister; (iii) the Ministry of Finance; (iv) the Ministry of Economic Planning and Investment Promotion; (v) the Ministry of Constitutional and Parliamentary Affairs; (vi) the Ministry of Justice and Legal Affairs; (vii) the Ministry of State Enterprises and Parastatals; (viii) the Ministry of Regional Integration and International Cooperation; (ix) the Ministry of Small and Medium Enterprises and Cooperative Development; (x) the Attorney-General's Office; (xi) the National Incomes and Pricing Commission; (xii) the Consumer Council of Zimbabwe; and (xiii) the National Economic Consultative Forum.

The Commission also appreciates the cooperative support it got from the Confederation of Zimbabwe Industries (CZI in which it is now a regular member and active participant in two of each key Standing Committees, the Economics and Banking Committee and the Trade Development and Investment Promotion Committee. Working relationships were also maintained with the two other major business associations, the Zimbabwe National Chamber of Commerce (ZNCC) and the Chamber of Mines, as well as with the Association for Business in Zimbabwe (ABUZ).

Of the international organisations that supported the Commission during the year, special mention must be made of the United Nations Conference on Trade and Development (UNCTAD) which organised the voluntary peer review of Zimbabwe's competition policy and law. The International Competition Network (ICN) gave valuable training and capacity building assistance to the Commission throughout the year through its on-line programmes. Nearer home, the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) continued to give the Commission support in the execution of both its competition and trade tariffs mandates.

I would like to thank all my colleagues on the Board of Commissioners for the way they dedicatedly carried out their functions and duties during the year. Last but not least, the Director and his staff must be praised for their operational accomplishments in very difficult conditions.

Dumisani Sibanda
Chairman

5. DIRECTOR'S REPORT ON OPERATIONS

5.1 Overview

The revival of the Commission's operations and activities in both its two core operational areas of competition and trade tariffs continued during the 2012 year under review following the country's decade-long economic downturn. Even though there was a slight decline in the number of competition cases handled during the year from those handled during the previous year, there was a marked improvement in the quality of the analyses undertaken and decisions made. In the area of trade tariffs, the number of tariff relief cases handled remained constant, but increased interest in requests for various trade remedies for dumping and subsidisation was recorded.

The decline in the number of competition cases handled was mainly attributed to the concentration given to cases involving monopolisation in both private and public sectors of the economy, particularly public utilities. The monopolisation cases handled by the Commission were all on the exploitative practice of excessive pricing, an area that the Commission has little analytical knowledge. Impediments to the effective investigation of unfair business practices, particularly those related to cartel activities, were also found in the Competition Act [Chapter 14:28] itself as it is currently drafted. The undertaking of 'dawn raids' for the gathering of evidence is not clearly and adequately provided for in the Act, thus making it extremely difficult to prove cases of cartelisation. The prohibited unfair business practice of collusive arrangements between competitors (price-fixing and market-sharing) is apparently *per se* prohibited under the Act, yet some rule-of-reason considerations are also provided for.

The review of the Act as recommended by UNCTAD's voluntary peer review of Zimbabwe's competition law and policy is therefore welcomed.

In the area of trade policy, the Commission continued to play its leading role as technical advisor to Government in trade negotiations, a role that justified its designation as a trade development organisation. The Commission's sectoral studies and reports on factory visits provided useful inputs into governmental policy formulation, including the National Budget. While the number of tariff relief requests is bound to decrease as regional trade is progressively being liberalised, cases of unfair trade practices (dumping and subsidisation) are on the increase as liberalised trade results in an influx of imported goods into the country. Knowledge and experience in trade remedies techniques, which is lacking in the Commission, is therefore imperative.

The effective undertaking during the year of the Commission's twin mandates of implementation of competition policy and execution of trade policy greatly increased its visibility to its stakeholders and confirmed its role as a major player in the country's economic development.

The Commission's financial performance during the year was very good, with the recording of a surplus at the end of the year. The Commission was thus able to complete its computerisation, and to purchase the much needed motor vehicles for its operations. The Commission was however unable to use its improved financial position to develop its human resources, in the form of recruitment and better conditions of services, because of governmental directives and regulations.

5.2 Competition Operations

The Commission's competition operations primarily involve investigating competition cases and remedying competition concerns. Competition advocacy and awareness activities are also undertaken.

5.2.1 Competition Cases

The handling of competition cases by the Commission is governed and guided by the provisions of Part IV of the Competition Act [*Chapter 14:28*] (on 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 the First Schedule to the Act (unfair business practices).

The Commission during the 2012 year under review handled a total of 28 competition cases, of which 16 involved restrictive business practices, and 12 were mergers and acquisitions. The number of cases handled during the year were however fewer than the 37 cases handled during the previous year as concentration was on public monopolies and utilities. Fewer mergers and acquisitions in the financial services sector than had been expected in response to the Reserve Bank of Zimbabwe (RBZ)'s raised minimum capital requirements for banking institutions were also concluded and notified to the Commission.

Table 11: Comparative Number of Competition Cases Handled Over the Years

Case Category	1999-2001	2002-2004	2005-2007	2008-2010	2011	2012	Total
Restrictive Business Practices	58	61	54	47	21	16	257
Mergers and Acquisitions	24	78	81	29	16	12	240
Competition Studies	9	12	13	4	0	0	38
Totals	91	151	148	90	37	28	535

The number of competition cases handled during the year under reviewed referred to the cases completed during that year, and therefore not reflective of the competition investigative and analysis activity undertaken.

Table 12: Competition Case Activity in 2012

Case Category	No. of Cases Brought Forward From 2011	No. of Cases Received In 2012	No. of Cases Completed In 2012	No. of Cases Carried Forward to 2013
Restrictive Business Practices	16	14	16	14
Mergers and Acquisitions	6	8	12	2

Of the competition cases carried over to the 2013, 2 were mergers and acquisitions (the proposed acquisition of Glaxosmithkline Group by Aspen Pharmaceutical Holdings, and a stakeholder hearing into the acquisition of Pelhams Limited by TN Holdings), and 14 involved restrictive business practices, of which 7 were at preliminary investigation stage and the other 7 at full-scale investigation stage.

Table 13: Restrictive Business Practices Cases Carried Over to 2013

Cases At Preliminary Investigation Stage	Cases At Full-Scale Investigation Stage
1. Alleged restrictive practices by Makoni Rural District Council in the provision of municipal services. 2. Alleged restrictive practices by FMI in the petroleum distribution industry. 3. Alleged restrictive practices in the distribution of molasses.	1. Restrictive practices in the fixed-line telephone services sector. 2. Restrictive and unfair business practices in the cotton industry. 3. Unfair business practices in the bread industry. 4. Restrictive practices in the flour milling and distribution industry.

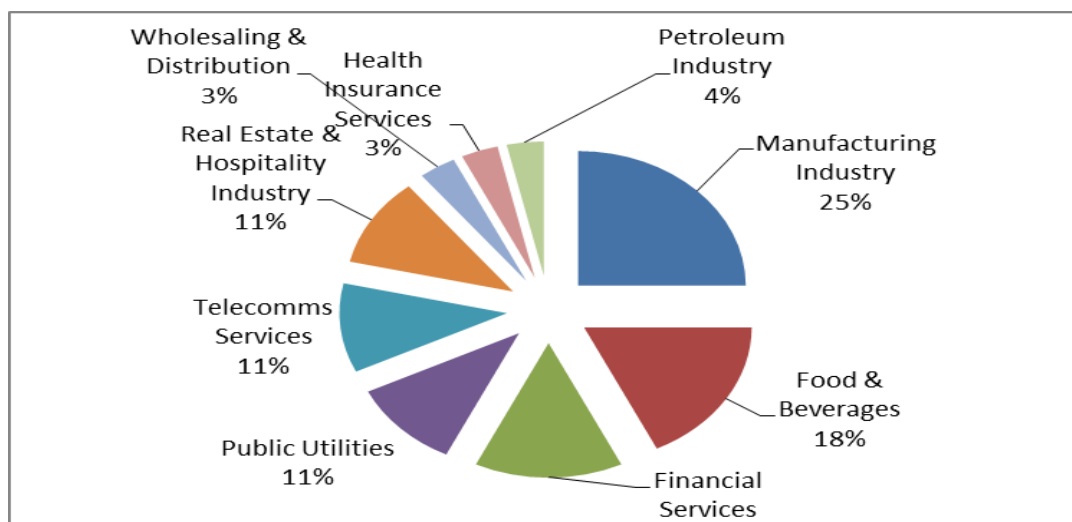
4. Alleged restrictive practices by ZimPost and Champions Insurance in the insurance services sector.	5. Restrictive practices in the pathological health insurance services sector.
5. Alleged restrictive practices by Telecel in the mobile banking services sector.	6. Restrictive practices in the provision of municipal services in the Harare geographical area.
6. Alleged restrictive practices by Steel Makers Zimbabwe in the agricultural implements manufacturing industry.	7. Restrictive practices in the provision of municipal services in the Bulawayo geographical area.
7. Alleged restrictive practices by British American Tobacco in the cigarette manufacturing and distribution industry.	

The most intervened sector in terms of competition case handling during the 2012 year under review was the manufacturing industry, followed by the food & beverages industry, and then by the financial services sector. Interventions were also made in the public utilities sector (including municipal services), telecommunications services sector, real estate & hospitality industry, health insurance services sector, petroleum industry, and wholesaling & distribution industry.

Table 14: Sectoral Competition Interventions in 2012

Sector	Restrictive Business Practices	Mergers and Acquisitions	Total
Financial Services	1	3	4
Health Insurance Services	1	0	1
Public Utilities	3	0	3
Food & Beverages	3	2	5
Telecommunications Services	2	1	3
Manufacturing Industry	3	4	7
Petroleum Industry	0	1	1
Real Estate & Hospitality Industry	0	3	3
Wholesaling & Distribution	1	0	1
Totals	14	14	28

Graph 1: Sectoral Distribution of Competition Interventions in 2012



The Competition Act [Chapter 14:28] does not specifically provide for the timeframes for the handling of competition cases. The Commission has however administratively given itself up to 120 days for the investigation of restrictive business practices, and up to 90 days for the examination of mergers and acquisitions. During the 2012 year under review, the Commission took an average of 64 days to investigate restrictive business practices, and 41 days to examine mergers and acquisitions, which generally was an improvement over the previous years.

Table 15: Competition Case Turnaround Times

Type of Competition Case	Average Case Turnaround (working days)						
	2006	2007	2008	2009	2010	2011	2012
Mergers and Acquisitions	58	69	106	68	61	39	41
Restrictive Business Practices	122	164	145	184	99	130	64

(a) Restrictive Business Practices

The Competition Act [Chapter 14:28] prohibits two main types of restrictive business practices: (i) restrictive practices that are considered using the rule-of-reason approach; and (ii) unfair business practices that are *per se* prohibited.

(i) Restrictive Practices

Restrictive practices as defined in terms of section 2(1) of the Competition Act [Chapter 14:28] include anti-competitive agreements, and other concerted action, and unilateral conduct of an abusive nature. Abuse of dominance, or monopolisation, is therefore covered in the definition. 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 ...". Prohibited restrictive practices are of both exclusionary and exploitative nature, and include:

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

The *des minimus* rule underlies the definition of the term 'restrictive practice' in the Act in that the practice must materially restrict competition to be prohibited. The rule-of-reason approach used by the Commission in investigating restrictive practices is crucial in that 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.

The Commission's investigation of restrictive practices is done in three basic steps, as follows:

- **Step 1:** Commencement of a preliminary investigation by the Directorate's Competition Division upon receipt of a competition complaint, referrals from other authorities, or at the Commission's own initiative.
- **Step 2:** Information and evidence gathering.
- **Step 3:** Assessment of the competitive effects of the alleged or suspected restrictive practices to determine their materiality.

Step 1 Commencement of Preliminary Investigation	Step 2 Information and Evidence Gathering	Step 3 Assessment of Competitive Effects
A preliminary investigation in terms of section 28(1a) of the Competition Act [Chapter 14:28] into an alleged or suspected restrictive practice is commenced by the Competition Division upon receipt of the complaint from any interested party (business undertakings or persons), or referrals from other authorities (government departments and sector regulators). The Commission can also initiate an investigation on its own from findings of its competition studies, or from newspaper reports. Tips from whistle-blowers and anonymous complainants can also be considered if they are found not to be frivolous. The Commission informs the respondents of the commencement of the preliminary investigation, and requests them to make any representations on the matter.	The Competition Division undertakes stakeholder consultations to gather information and evidence on the alleged, or suspected, restrictive practices. Besides the complainants, stakeholders consulted include competitors, customers, suppliers, trade/consumer associations, industry representative bodies, sector regulators, and other interested third parties. Desk research on similar cases in also undertaken.	The competitive effects of the alleged or suspected restrictive practices are assessed by the Competition Division to determine their materiality. The assessment report is submitted to the Commission's Mergers & Restrictive Practices Committee with appropriate recommendations: • If no competition concerns are found, or if the Commission lacks jurisdiction over the matter, the case is closed; • If there are some competition concerns, but not of a serious nature, negotiations in terms of section 30 of the Competition Act [Chapter 14:28] may be held with the offending parties on the discontinuance of the restrictive practice(s). • If serious competition concerns are found, and a <i>prima facie</i> case has been established on the existence of the alleged restrictive practices, a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] is undertaken.

The Commission during the 2012 year under review decided upon 8 preliminary investigations into restrictive practices that were undertaken by the Competition Division. All the restrictive practices that were investigated were related to abuse of dominance, or monopolisation, with one having elements of vertical restraints. 3 of the investigated cases were closed for lack of competition cases, and the rest were advanced to the full-scale investigation stage.

Table 16: Preliminary Investigations into Restrictive Practices Decided Upon in 2012

Case	Synopsis of Case	Commission Decision																				
1. Alleged Excessive Pricing by Econet Wireless	In November 2011, the Commission’s Directorate commenced a preliminary investigation into suspected excessive pricing by Econet Wireless, the leading mobile telecommunications services provider in the country. The suspicion was based on the huge profits declared by Econet during its previous financial year. The case was investigated as an abusive exploitative practice of a dominant company. It was found that the telecommunications services sector in Zimbabwe is regulated by Posts and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ), which sets tariffs in the sector that are followed by all the players, including Econet Wireless. Econet Wireless was however more innovative than the other service producers and had introduced other services, such as the <i>EcoCash</i> money transfer facility, that had increased its profits.	The Commission closed case for lack of competition concerns. It was noted that Econet Wireless’ huge profits was a result of the company’s innovativeness and were not a result of anti-competitive practices. It was however also agreed that a general study be undertaken on competition implications of excessive pricing.																				
2. Alleged restrictive practices by Econet Wireless	In May 2011, the Commission received from NetOne, one of Zimbabwe’s three mobile telecommunications services providers, allegations of restrictive business practices by Econet Wireless, the country’s leading mobile telecommunications services provider. The allegations were that Econet was blocking NetOne customers on international roaming. On the face of it, the allegations constituted restrictive practices as defined in terms of section 2(1) of the Competition Act [Chapter 14:28] since they fell under the broad category of abuse of dominance on the part of Econet. A preliminary investigation in terms of section 28 of the Act was therefore undertaken. The relevant product market was defined as the provision of international roaming services. Both the complainant and respondent were resident and operating throughout Zimbabwe hence the geographic market was identified to be the whole of Zimbabwe. The mobile telecommunications industry was found to be highly concentrated, with an HHI of above 4300. Market shares in the Mobile Telecomms Industry <table><tr><th>Company</th><th>No. of Subscribers</th><th>Market Share</th><th>HHI</th></tr><tr><td>Econet Wireless</td><td>5 000 000</td><td>59</td><td>3481</td></tr><tr><td>NetOne</td><td>1 500 000</td><td>18</td><td>324</td></tr><tr><td>Telecel</td><td>2 000 000</td><td>23</td><td>529</td></tr><tr><td>Totals</td><td>8 500 000</td><td>100</td><td>4334</td></tr></table>	Company	No. of Subscribers	Market Share	HHI	Econet Wireless	5 000 000	59	3481	NetOne	1 500 000	18	324	Telecel	2 000 000	23	529	Totals	8 500 000	100	4334	The Commission closed the case for lack of evidence to prove the existence of the alleged restrictive practices of Econet Wireless.
Company	No. of Subscribers	Market Share	HHI																			
Econet Wireless	5 000 000	59	3481																			
NetOne	1 500 000	18	324																			
Telecel	2 000 000	23	529																			
Totals	8 500 000	100	4334																			

	Stakeholders consulted included the third mobile telecommunications services provider, Telecel, and the relevant sector regulator, the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ). Telecel raised no concerns with Econet in as far as international roaming was concerned; POTRAZ submitted that NetOne had previously complained to it about local interconnectivity with Econet, a problem that had emanated from a technical fault which POTRAZ and the Econet engineers attended to. POTRAZ also submitted that while it was possible for one service provider to bar the other from accessing its network, it was not possible to prove the barring once a call had terminated. The analysis of the case revealed Econet's market dominance but failed to establish the abuse of that dominance mainly due to serious lack of co-operation from the complainant, NetOne, throughout the investigation, and also lack of technical evidence to prove the allegations against Econet Wireless.	
3. Alleged restrictive practices by Innscor Africa Limited group of companies	Complaints were received in November 2010 from the Elders of the National Bakers Association of Zimbabwe that Innscor Africa Limited, and its subsidiary, National Foods Limited, was marginalising other bakeries in favour of its other subsidiaries, Bakers Inn. Various competitors of Innscor in the various markets where that company operates in (which include markets in the fast moving consumer goods retail, bakery, poultry and pork products sectors) also alleged anti-competitive practices on the part of the Innscor Group of companies. The Innscor Group of companies included: (i) National Foods Limited (in the milling industry); (ii) Colcom Foods (in the pork products industry); (iii) Bakers Inn (in the bakery industry); (iv) Irvines Zimbabwe (in the poultry industry); (v) Innscor Snacks and Iris Biscuits (in the confectionery industry); (vi) Capri (in the appliance manufacturing industry); (vii) Freshco (in the fruit and vegetable industry); (viii) <i>Spar</i> DC and <i>Spar</i> Shops (in the wholesaling and retailing of fast moving consumer goods); and (ix) TV Sales & Home (in the appliance and furniture retailing industry). The Commission investigated the allegations against Innscor as restrictive practices as defined in section 2(1) of the Competition Act [Chapter 14:28]. The relevant product market in its functional dimension was defined as the production and distribution of: (i) basic commodities, such as meal-meal, flour, rice, cooking oil and salt; (ii) bread and confectionaries; (iii) pork products; and (iv) poultry products. The geographic market was defined as the whole of Zimbabwe. Stakeholders consulted included the Innscor Group's competitors, customers and suppliers in the various markets that it operated. The stakeholders aired concerns	The Commission noted that Innscor, through the vertical linkages, had market power in the flour, bread and confectionery, pork products, mealie meal, chicken production and fast foods markets. Through those vertical linkages, some strategic barriers were being created in favour of Innscor resulting in the latter foreclosing markets in the downstream markets for competitors and potential competitors. It was therefore resolved that a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] be undertaken into the allegations.

	of abuse in the flour, bread, pork products and mealie meal markets. Innscor was said to control the supply chain from production to distribution. Product suppliers complained that they could not supply products to <i>Spar</i> outlets. Bakeries complained that they had limited shop space as Innscor entered into an agreement with OK Zimbabwe Limited, a large independent supermarket chain, which permitted them to occupy 80% of the OK supermarkets bread shop space. The agreement restricted competition in the bread retailing market. During times of shortages, it was alleged that Innscor preferentially supplied its subsidiaries, such as <i>Spar</i> shops and Bakers Inn, with products at the expense of other market players. The dominance test undertaken established that Innscor had market power in the flour, bread and confectionary, pork products, mealie-meal, chicken production and the fast foods market. The strong vertical backward and forward linkages that had resulted from Innscor's previous acquisitions had made the dominance of Innscor sustainable. The vertical linkages also erected some form of strategic barriers as Innscor could foreclose markets in the downstream markets for its competitors, and also for potential entrants.													
4. Alleged restrictive practices by Cimas Medical Aid Society in the provision of pathological services	In January 2012, the Commission received complaints from Lancet Clinical Laboratory alleging restrictive practices by Cimas Medical Aid Society. Cimas is a medical insurer which also owns and operates medical centres, including medical laboratories. Lancet Clinical Laboratory competes with Cimas' medical laboratories in the provision of pathology tests. The allegations levelled by Lancet were that Cimas unilaterally decided to put Lancet on cash in the provision of its services to members of the medical aid society, thus putting it at a competitive disadvantage with Cimas medical laboratories. The Commission accordingly undertook a preliminary investigation in terms of section 28 of the Competition Act [Chapter 14:28] into the complaint. The relevant product market under investigation was identified as <i>the provision of pathology tests under medical insurance</i>. The relevant geographic market was identified to be the whole of Zimbabwe. Concentration inference using the Herfindahl-Hirschman Index (HHI) indicated high concentration in the relevant market of over 4 500. Cimas medical laboratories accounted for 60% market share followed by Lancet with 30%. Market Shares in the Pathology Services Market <table border="1"> <thead> <tr> <th>Medical Centre</th><th>Est. Market Share</th><th>HHI</th></tr> </thead> <tbody> <tr> <td>Cimas Medical Laboratories</td><td>60</td><td>3600</td></tr> <tr> <td>Lancet Clinical Laboratory</td><td>30</td><td>900</td></tr> <tr> <td>PSMI Laboratories</td><td>9</td><td>81</td></tr> </tbody> </table>	Medical Centre	Est. Market Share	HHI	Cimas Medical Laboratories	60	3600	Lancet Clinical Laboratory	30	900	PSMI Laboratories	9	81	The Commission noted that a <i>prima facie</i> case had been established on the existence of the alleged restrictive practices and resolved that a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] be carried out into the matter.
Medical Centre	Est. Market Share	HHI												
Cimas Medical Laboratories	60	3600												
Lancet Clinical Laboratory	30	900												
PSMI Laboratories	9	81												

	<table> <tr> <td>Others</td><td>1</td><td>1</td></tr> <tr> <td>Total</td><td>100</td><td>4582</td></tr> </table> Besides the respondents, Cimas Medical Aid Society, stakeholders consulted included implicated medical practitioners, the Association of Pathologists in Zimbabwe, and the Ministry of Health and Child Welfare. Cimas submitted that Lancet was put on cash because it was claiming for procedures not requested by the doctors, using huge quantities for procedures sent to South Africa and also using an emergency tariff where it did not apply. Lancet countered that even when it scrapped the use of the emergency tariff, Cimas did not revoke its decision to put it on cash. The medical practitioners that referred patients to Lancet for laboratory tests submitted that Lancet did not undertake tests outside their request as alleged by Cimas. The consultations undertaken proved that Cimas was indeed engaging in restrictive practices. The alleged conduct by Cimas was found to restrict competition in the relevant market in that it had the likely effect of compelling members of the Cimas medical aid scheme to use Cimas medical laboratories where cards are accepted rather than looking for cash to access services from Lancet. That way, Lancet lost business through unfair competition.	Others	1	1	Total	100	4582	
Others	1	1						
Total	100	4582						
5. Alleged restrictive practices by the Harare City Council in the provision of municipal services	During the course of the year 2009, the Commission undertook a preliminary investigation into suspected abuse of the City of Harare's monopoly position in the provision of treated water in the Harare metropolitan area. The Commission resolved to negotiate with the Municipality in terms of section 30 of the Competition Act [Chapter 14:28] the discontinuance of the abusive practices. Before commencement of the negotiations in terms of section 30 of the Act, the Commission received further complaints against the City of Harare regarding the provision of other municipal services, such as refuse collection, municipal rates on land and property, parking charges in the CBD, clinic charges, etc. The complaints were basically on high charges for municipal services vis-à-vis poor service delivery by the Municipality. The Commission accordingly extended its preliminary investigation into the alleged abusive practices of the City of Harare to include the new complaints. The investigation was carried out in terms of section 28 of the Act, which empowers the Commission to investigate monopoly situations in order to access whether they are contrary to public interest. The relevant market was identified as the <i>provision of municipal economic services in the Harare metropolitan area</i>. In that market, the City of Harare is in a monopoly position. Entry barriers into the market were in relation to high capital investment required in the provision of the municipal services, and the statutory monopoly that the City	The Commission agreed to engage the Ministry of Local Government and the Municipality of Harare in negotiations aimed at addressing the following issues: • Valuation of property • Water billing system • Shop licensing • Refuse collection • Water disconnections • Determination of rates It was however resolved that the Commission should first conduct a public hearing into the matter, which would inform the negotiations that would follow.						

	has in the provision of the services. Stakeholders consulted included business and residents associations, relevant Government Ministries, and the Urban Councils Association of Zimbabwe. The findings of the investigation were that the Commission was not challenging the statutory monopoly position of the City of Harare in the provision of the municipal services, but that the position was being used against the public interest. It was noted that the practices of the City of Harare in its provision of municipal services seemed exploitative in nature in that the fees and charges were excessive, and that inadequate consultations were being held with ratepayers.	
6. Alleged restrictive practices by the Bulawayo City Council in the provision of municipal services	In September 2009, the Commission received complaints against the practices of the Bulawayo City Council in relation to the Council's abuse of monopoly position in the provision of municipal services in the Bulawayo area through the imposition of excessive charges on water, rates and levies to consumers of the utilities and services. The Commission accordingly undertook a preliminary investigation into the allegations in terms of the Competition Act [Chapter 14:28]. It was noted that the Commission has jurisdiction over the alleged practices of the Municipality since they were connected with the undertaking of economic activities. The case was investigated as abuse of monopoly position since the City of Bulawayo has statutory monopoly in the provision of municipal services in the Bulawayo metropolitan area. The relevant market was identified as <i>the provision of water; refuse collection; shop licensing; and municipal rates on land and property in Bulawayo</i>. Being a monopoly, Bulawayo City Council is the sole supplier in the relevant market, hence the concentration level in terms of HHI was the highest 10000, implying that the relevant market was susceptible to serious competition concerns. The stakeholders consulted included the Association for Business in Zimbabwe (ABUZ), Bulawayo Progressive Residents Association (BPRA), and large private companies. All the stakeholders consulted raised concerns over the conduct of Bulawayo City Council in the relevant market. The investigation found out that Bulawayo City Council was short-changing Bulawayo residents in terms of both price and quality of services and commodity. The residents were being charged bills which were not commensurate with service delivery or consumption. There were also concerns regarding exorbitant charges on shop licences; water reconnection fees and valuation of property. The preliminary investigation hence established a <i>prima facie</i> case against Bulawayo City Council's monopoly provision of municipal services, which was found to be	The Commission also agreed to engage the Ministry of Local Government and the Municipality of Bulawayo in negotiations aimed at addressing the following issues: • Valuation of property • Water billing system • Shop licensing • Refuse collection • Water disconnections • Determination of rates It was however resolved that the Commission should first conduct a public hearing into the matter, which would inform the negotiations that would follow.

	contrary to the public interest.	
7. Alleged restrictive practices by the Zimbabwe Electricity Transmission and Distribution Company	The Commission in January 2011 received a complaint from Pretoria Portland Cement (PCC), a cement manufacturing company located in the Matebeleland Province of Zimbabwe, alleging that Zimbabwe Electricity Supply Authority (ZESA), through through its subsidiary, Zimbabwe Electricity Transmission and Distribution Company (ZETDC) was charging them higher electricity tariffs than the other cement manufacturing companies in Zimbabwe in a discriminatory manner, and also that they were being load shed more than their competitors such that they had to enter into an expensive ring fenced scheme with ZETDC to avoid being load shed. ZESA is a statutory monopoly and is the only utility currently licensed in terms of the Electricity Act [Chapter 13:19] to generate, transmit and distribute electricity in Zimbabwe. ZETDC is a subsidiary of ZESA and is the one that is responsible for the transmission and distribution of electricity. The Commission upon receipt of the PCC complaint embarked on preliminary investigations into the matter in terms of section 28 of the Competition Act [Chapter 14:28]. The relevant market was defined as <i>the supply of electricity to cement manufacturing industry in Zimbabwe</i>. Consultations were made with other companies in the cement manufacturing industry, i.e., Lafarge Cement and Sino Zimbabwe Cement, who basically felt that PPC was not forced to enter into a ring fenced agreement with ZETDC. Sino Zimbabwe Cement submitted that it does not really get load shed because it is along a secure line which does not get load shed for security and strategic reasons. That being the case, Sino did not find it necessary to enter into a ring fenced agreement with ZETDC. Lafarge Cement initially did not sign an agreement with ZETDC, and during that time it was being load shed. As a result of that load shedding Lafarge decided to enter into a ring fenced agreement with the power utility. It was now not being load shed but is paying a higher tariff for that. It also submitted that it entered into such an arrangement willingly. Accordingly it was also paying the same electricity tariff as that being paid by PPC. The evidence gathered and submitted during the investigation therefore did not prove a case of restrictive practice in the form of discriminatory treatment on the part of ZETDC.	The Commission noted that the complainant had failed to produce evidence to substantiate the allegations that ZETDC was discriminating against it on load shedding. The complainant had been requested to produce the load shedding timetable so that the Commission could compare with power availability times for other cement producers. It was therefore agreed to close the case for lack of evidence to substantiate the allegations of restrictive practices by ZETDC.
8. Alleged restrictive practices by private abattoirs in the meat industry	In June 2012, the Commission received a complaint from the Meat Traders' Association alleging that private abattoirs were engaging in restrictive practices in the distribution of beef. The allegation was that the abattoirs, who are traditionally wholesalers of beef, were opening their own retail outlets selling beef directly to the consuming public at	The Commission noted that a <i>prima facie</i> case had been established that the private abattoirs were distorting competition in the beef retailing sector by

	the same price that they were charging to retailing butcheries and other bulk buyers. The relevant product market was defined as the wholesaling and retailing of beef and the geographical market was considered to be the whole of Zimbabwe. Stakeholder consultations were carried out in the country's major cities and towns of Harare, Bulawayo, Gweru, Mutare, Marondera, and Masvingo. The allegations were found to be more rampant in Harare, and that large supermarket chains also claimed to have been adversely affected by the alleged practices of the private abattoirs. The investigated private abattoirs justified their opening of beef retailing outlets on efficiency and viability grounds, which were strongly disputed by the other stakeholders.	selling beef directly to consumers at the same prices they were selling to retailing butcheries. It was therefore agreed to undertake a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] into the alleged restrictive practices.
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(ii) *Unfair Business Practices*

Under the Competition Act [Chapter 14:28], unfair business practices are a form of restrictive practices that are *per se* prohibited in terms of section 32(3) of the Act, and criminal offences in terms of section 42. Section 42(3) of the Act provides that “any person who enters into, engages in or otherwise gives effect to an unfair business practice shall be guilty of an offence and liable: (a) in the case of an individual, to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; (b) in any other case, to a fine not exceeding level fourteen”. Section 32(3) of the Act provides that “unlawful unfair business practices shall be deemed ... to be absolutely contrary to the public interest”.

Section 42(1) of the Act provides that “the acts or omissions specified in the First Schedule shall be unfair business practices for the purposes of this Act”. The First Schedule to the Act lists the following acts or conduct as unfair business practices: (i) misleading advertising; (ii) false bargains; (iii) distribution of commodities or services above advertised price; (iv) undue refusal to distribute commodities or services; (v) bid-rigging; (vi) collusive arrangements between competitors; (vii) predatory pricing; (viii) resale price maintenance; and (ix) exclusive dealing.

Like restrictive practices, the Commission's investigation of unfair business practices is done in three basic steps, as follows:

- **Step 1:** Commencement of a preliminary investigation by the Directorate's Competition Division upon receipt of a complaint, or unearthing of the unfair business practice.
- **Step 2:** Evidence gathering.
- **Step 3:** Evaluation of the evidence gathered to prove whether or not the alleged unfair business practice was engaged in.

Step 1 Commencement of Preliminary Investigation	Step 2 Evidence Gathering	Step 3 Evaluation of Evidence Gathered
Commencement by the Competition Division of a preliminary investigation into the	Evidence and information gathering on the alleged or suspected unfair business practice through stakeholder consultations	Unfair business practices are <i>per se</i> prohibited under the Competition Act [Chapter 14:28]. As such, one only has to prove that the practice

alleged or suspected unfair business practice in terms of section 28(1a) of the Competition Act [Chapter 14:28]. With the exception of investigations into hard-core cartel activity (price-fixing, market-sharing and bid-rigging agreements and arrangements), the respondents are informed of the commencement of the investigation and requested to make any representations on the matter. Investigations into hard-core cartel activity are conducted in secrecy for fear of evidence destruction by the respondents.	and desk research. Dawn raids can be held in terms of section 47 of the Competition Act [Chapter 14:28] to collect evidence from premises. Particularly in cases of hard-core cartels. The Commission presently does not have a leniency programme in place to get first hand evidence from cartel members. Heavy reliance therefore has to be made on whistle-blowers and dawn raids.	was engaged in for the practice to be declared illegal. The <i>per se</i> prohibition of the unfair business practice of ‘collusive arrangements between competitors’ however has some rule-of-reason elements since it exempts arrangements that are “<i>bona fide</i> intended solely to improve standards of quality or service in regard to the production or distribution of the commodity or service concerned”. The findings of the investigation are submitted to the Board of Commissioners, through the Commission’s Mergers & Restrictive Practices Committee, for decision on the engagement or otherwise of the alleged or suspected unfair business practice. Once proved, the unfair business practice is referred for prosecution in terms of section 42(3) of the Competition Act [Chapter 14:28].
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During the 2012 year under review, only one unfair business practices case was investigated and concluded by the Directorate’s Competition Division.

Table 17: Preliminary Investigation into Unfair Business Practices Concluded in 2012

Case	Competition Concerns	Synopsis of Case	Commission Decision
Preliminary investigation into alleged unfair business practices by the National Bakers Association of Zimbabwe in the bread making and distribution industry.	Price Fixing	In January 2012, the Commission re-opened its preliminary investigation into suspected collusive behaviour in the bread making industry. It had come to the notice of the Commission through a newspaper advertisement that the National Bakers Association of Zimbabwe (NBAZ) a uniform increase in the retail prices of bread on the local market. The Association had however subsequently reversed that decision. The reopened investigation revealed that retail prices of bread in Zimbabwe’s two major cities of Harare and Bulawayo were still the	The meeting noted the need for the Commission as a regulator to be ahead of the market in terms of capacity to handle such cases and agreed with the Committee’s recommendation that the stakeholder hearing in the bread cartel case should be held as soon as possible. The Commission agreed to undertake a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] requiring a public/stakeholder hearing into the matter to give the

		same and in line with the NBAZ's recommended prices. A review of a similar case handled by the Competition Commission of South Africa supported the need for further investigation in the bread cartel case. The South African competition authority had penalised companies that engaged in cartel behaviour facilitated by an industry association similar to the NBAZ. The penalised conduct included the exchange of competitively sensitive information relating to the pricing of bitumen and associated products, and the use of an agreed pricing formula to set the wholesale list selling price of bitumen. It was established that the NBAZ discussed and agreed with its members, who are competitors in the production and distribution of bread, on a uniform price increase. An Elder of the NBAZ in a letter of complaint on a different competition case had also confirmed the existence of the price-fixing bread cartel. It was noted that while price-fixing is technically a <i>per se</i> prohibition, the Competition Act [Chapter 14:28] of Zimbabwe provides for some rule-of-reason consideration of the unfair business practice of 'collusive arrangements between competitors', including price-fixing arrangements, to determine whether or not they are "<i>bona fide</i> intended solely to improve standards of quality or service in regard to the production or distribution of the commodity or service concerned".	respondents, and other interested parties, an opportunity to make representations efficiency of the concerned practices.
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Of the 16 outstanding cases of restrictive business practices that the Commission carried over from the previous 2011 year, 3 were at full-scale investigation stage. 6 other full-scale investigation cases were added to that list during the 2012 year under review, and were at various stages of investigation by the end of the year.

Table 18: Restrictive Business Practices Full-Scale Investigated in 2012

Case	Competition Concerns	Investigations Undertaken
1. Full-scale investigation into alleged restrictive practices by Cimas Medical Aid Society in the dialysis services sector	Abuse of Dominance	The report on the investigation was adopted by the Commission at its Fifty-First Ordinary Meeting held in September 2012. Cimas Medical Aid Society was given a cease and desist order not to direct its members for dialysis procedures to a specific service provider, and also that it should honour and reimburse all medical claims made by its members for dialysis procedures done at any dialysis centre in Zimbabwe at the same rate it is reimbursing medical claims by its members for dialysis procedures done at Parirenyatwa Dialysis Centre. The <i>Gazette</i> notice on the Commission's Order against Cimas Medical Aid Society was by the end of the year under review awaiting approval of the Attorney General's Office before publication.
2. Full-scale investigation into alleged restrictive practices by TelOne in the fixed-line telecommunications services sector	Monopolisation	The report on the investigation was ready for adoption by the Commission by the end of the year under review. The findings of the investigation were that restrictive practices in the fixed-line telephone services sector of the type investigated by the Commission used to exist from the time of the former Posts & Telecommunications Corporation (PTC) until recently when they were rectified by directives of the Ministry of Transport and Communication. The monopoly situation in that sector, in which TelOne was the operator, was thus found to be no longer contrary to the public interest. It was also found that most of the investigated complaints against TelOne emanated from its billing practices following the switch-over in 2009 from the use of Zimbabwe Dollar to the US Dollar, and that the new billing system, and the conversion rates used, was not fully explained to telephone subscribers. It was noted that the relevant sector regulator of the fixed-line telephone services sector, the Postal & Telecommunications Regulatory Authority of Zimbabwe (POTRAZ), has the statutory function of maintaining and promoting effective competition between persons engaged in the provision of telecommunications services, which has to be performed in conformity with the Competition and Tariff Commission's broader functions of promoting competition in the whole economy of Zimbabwe. It was therefore recommended that the Commission closes its investigation into allegations of restrictive and unfair business practices in the fixed-line telephone services sector on the grounds that the investigated practices no longer

		existed in that sector. It was however also recommended that the Commission should urge TelOne to improve communication with its customers on matters affecting the provision of telephone services, and that the Commission and POTRAZ should conclude a cooperation and concurrent jurisdiction agreement on competition in the telecommunications services sector.
3. Full-scale investigation into alleged restrictive and unfair business practices by the Cotton Ginners Association of Zimbabwe in the cotton industry	Collective Abuse of Dominance/ Cartelisation	The report on the investigation was also ready for adoption by the Commission by the end of the year under review. The investigation proved the existence of the alleged restrictive practices against the Cotton Ginners Association of Zimbabwe, and concluded that the Commission should issue appropriate cease and desist orders against the Association. It was also concluded that the Commission should make recommendations to the relevant Government authorities on the amendment of the Agricultural Marketing Authority (Seed Cotton and Seed Cotton Products) Regulations, 2009 to remove those provisions of the Regulations that promote anti-competitive collusion among members of the Cotton Ginners Association of Zimbabwe.
4. Full-scale investigation into alleged restrictive practices by the Innscor Africa Limited Group of companies in the fast moving consumer goods sector.	Abuse of Dominance	The Commission at its Fiftieth Ordinary Meeting held in April 2012 resolved to undertake a full-scale investigation in terms of section 28 of the Competition Act [<i>Chapter 14:28</i>] into allegations of restrictive practices by the Innscor Africa Limited group of companies following the establishment by a preliminary investigation undertaken by its Directorate of a <i>prima facie</i> case on the existence of the restrictive practices. Notices on the commencement of the investigation, and calling upon interested persons to submit written representations on the matter, were accordingly published in the <i>Government Gazette</i> and national newspapers in October 2012. Even though no written representations on the matter were received by the Commission, it was nevertheless decided to proceed with the investigation by holding a stakeholder hearing into the allegations. Arrangements to hold the stakeholder hearing into the allegations were being made by the end of the year under review.
5. Full-scale investigation into alleged restrictive practices by Cimas Medical Aid Society in the pathological services sector	Abuse of Dominance	The Commission at its Forty-Ninth Ordinary Meeting held in April 2012 resolved to undertake a full-scale investigation in terms of section 28 of the Competition Act [<i>Chapter 14:28</i>] into allegations of restrictive practices by Cimas Medical Aid Society following the establishment by a preliminary investigation undertaken by its Directorate of a <i>prima facie</i> case on the existence of the restrictive practices. Notices on the commencement of the investigation, and calling upon interested persons to submit written representations on the matter, were accordingly published in the <i>Government Gazette</i> and national newspapers.

		Over 20 written representations on the matter, mainly from medical practitioners, as well as from individuals and associations, were received by the Commission. The representations were being analysed by the end of the year under review for the purposes of holding a public/stakeholder hearing into the matter.
6. Full-scale investigation into alleged restrictive practices by the City of Harare in the provision of municipal services	Monopolisation	The Commission at its Fifty-Second Ordinary Meeting held in November 2012 resolved to undertake full-scale investigations in terms of section 28 of the Competition Act [Chapter 14:28] into allegations of restrictive practices of a monopolisation nature by both the City of Harare and the City of Bulawayo following the establishment by preliminary investigations undertaken by its Directorate of <i>prima facie</i> cases on the existence of the restrictive practices in the two towns.
7. Full-scale investigation into alleged restrictive practices by the City of Bulawayo in the provision of municipal services	Monopolisation	Notices on the commencement of the investigation, and calling upon interested persons to submit written representations on the matter, were published in the <i>Government Gazette</i> and national newspapers during the month of December 2012. The written representations received by the Commission on the matter were being analysed by the end of the year under review.
8. Full-scale investigation into alleged restrictive practices by private abattoirs in the meat industry	Collective Abuse of Dominance and Cartelisation	The Commission at its Fifty-Second Ordinary Meeting held in November 2012 resolved to undertake a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] into allegations of restrictive practices by private abattoirs in the meat industry following the establishment by a preliminary investigation undertaken by its Directorate of a <i>prima facie</i> case on the existence of the restrictive practices. Notices on the commencement of the investigation, and calling upon interested persons to submit written representations on the matter, were accordingly published in the <i>Government Gazette</i> and national newspapers in December 2012. The written representations received by the Commission on the matter were being analysed by the end of the year under review.

(b) Mergers and Acquisitions

Mergers and acquisitions are considered under the Competition Act [Chapter 14:28] using the rule-of-reason approach, the substantive examination test in terms of section 32(4) of the Act being substantial lessening of competition, or creation of a monopoly situation, in any part of Zimbabwe.

Most mergers pose little or no serious threat to competition, and may actually be pro-competitive. Such benevolent mergers have a number of economic advantages, such as resultant economies of scales, reduction in the cost of production and sale, and gains of horizontal integration. There could also be more convenient and reliable supply of input materials and reduction of overheads. The advantages could lead to lower prices to the consumer. Other mergers however seriously harm

competition by increasing the probability of exercise of market power. In this regard, concerns about vertical restraints and abuse of dominance come to the fore. Mergers can also sometimes produce market structures that are anti-competitive in the sense of making it easier for a group of firms to cartelise a market, or enabling the merged entity to act more like a monopolist

It is therefore no wonder that most mergers are approved by competition authorities, or are approved with conditions aimed at eliminating their harmful effects or enhancing their efficiency and public interest benefits..

The term ‘merger’ as defined in terms of section 2(1) of the Competition Act [*Chapter 14:28*] includes horizontal mergers (i.e., those that take place between two or more firms that are actual or potential competitors in that 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 and distribution in that firms that have actual or potential buyer-seller relationships). The term however does not include conglomerate mergers (i.e., those between firms that neither produce competing products nor are in an actual or potential buyer-seller relationship) unless they have some horizontal and/or vertical elements.

Merger control by the Commission is done in three basic steps, as follows:

- **Step 1:** Notification of mergers and acquisitions in terms of section 34A of the Competition Act [*Chapter 14:28*].
- **Step 2:** Examination and assessment of mergers and acquisitions in line with the provisions of Part IVA and section 32(4) and (4a) of the Competition Act.
- **Step 3:** Determination of mergers and acquisitions.

Step 1 Notification of Mergers and Acquisitions	Step 2 Examination and Assessment of Mergers and Acquisitions	Step 3 Determination of Mergers and Acquisitions
Notifiable mergers are notified to the Commission in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>]. ‘Notifiable mergers’ are mergers or proposed mergers with a value at or above the prescribed threshold. At present, the merger notification threshold as prescribed in Statutory Instrument 110 of 2011 (Competition (Notifiable Merger Thresholds) (Amendment) Regulations, 2011 (No.2)) is US\$1.2 million or more of the combined annual turnover, or assets, in Zimbabwe of the merging parties. Completed and signed merger notification forms are submitted to the Commission in hard or soft copy. The merging parties are informed whether the information in the	The investigation of the competitive effects of mergers is done by the Competition Division. The substantive test used is “the substantial lessening of competition or the creation of a monopoly situation that is contrary to the public interest”. The investigation includes stakeholder consultations and economic analyses. Economic analyses undertaken includes the calculation of market shares and concentration levels in the relevant markets. Besides the competitive effects of the transactions, public interest considerations are also taken into account in the merger examination.	Merger examination reports of the Competition Division are submitted to the Commission’s Mergers & Restrictive Practices Committee for consideration. The Committee makes recommendations on the merger to the full Board of Commissioners. Mergers are approved with or without conditions, or are prohibited. In the case of conditional approvals or prohibitions, the merging parties are given opportunities to make representations to the Commission on the intended decision.

merger notification form is sufficient to commence the effective examination of the transaction.		
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The Commission during the year under review examined and made determinations on a total of 11 merger transactions, of which: (i) 5 were approved without any conditions; (ii) 3 were conditionally approved; (iii) 2 were referred to full-scale investigation; and (iv) 1 was not challenged for lack of jurisdiction. One transaction, involving the proposed acquisition of Hathanay Investments (Pvt) Limited by Syre Properties (Pvt) Limited was withdrawn by the merging parties before the Commission could make a determination on it.

Table 19: Merger Transactions Determined in 2012

Transaction	Synopsis of Transaction	Commission Decision
1. Acquisition of Kingdom Bank by AfriAsia Bank	The Commission on 23 January 2012 received notification in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>] of the proposed acquisition by Afrasia Bank Limited (ABL) of 35% in Kingdom Financial Holdings Limited (KFHL)'s issued share capital. The acquiring firm, ABL, is a financial services company domiciled in Mauritius which intended to spread its wings into the SADC region. KFHL, the target firm, operates in the Zimbabwean financial services market. The transaction was such that ABL invest in KFHL through a Special Purpose Vehicle (SPV) domiciled in Mauritius. The SPV would be owned 52% and 48% by ABL and Legan Trust, a Zimbabwe domiciled trust established by the majority shareholder of KFHL for the benefit of his family, respectively. The effective shareholding in KFHL to be held by ABL and Legin Trust would be 35% and 33% respectively, altogether constituting 68% of the issued share capital of KFHL. The transaction was a horizontal merger as defined in terms of section 2(1) of the Competition Act [<i>Chapter 14:28</i>], and was also a notifiable merger in terms of section 34(2) of the Act. The relevant product market was identified as the provision of banking services, and the geographic market was identified as the whole of Zimbabwe. The relevant market was found to be lowly concentrated, with pre-merger and post-merger HHI of 1220 and CR₄ of 58%. The main entry barriers into the market was the Reserve Bank of Zimbabwe (RBZ)'s capital requirement for commercial banks of US\$12.5 million. The minimum capital requirement for merchant banks and building societies was US\$10 million, for finance houses and discount houses US\$7.5 million, and for asset management companies US\$0.5 million. The evaluation of the transaction showed that the acquisition of KFHL by ABL would not change the structure of the relevant market, given that ABL had no operations in Zimbabwe and	The Commission noted that the transaction was not likely to prevent or lessen competition substantially in the relevant market, and therefore unconditionally approved the merger.

	that its involvement in KFHL would not immediately change the market share of KFHL. The transaction would therefore not reduce the level of competition in the market. Rather the transaction would make KFHL more active thus increasing the level of competition.																									
2. Acquisition of Renaissance Merchant Bank Limited by National Social Security Authority	In March 2012, the Commission received notification in terms of section 34A of the Competition Act [Chapter 14:28] of the proposed acquisition of controlling stake in Renaissance Merchant Bank Limited (RMB) by the National Social Security Authority (NSSA). RMB is a banking institution registered in terms of the Banking Act [Chapter 24:20] and NSSA is a statutory social security insurance authority, which was established in terms of the National Social Security Authority Act [Chapter 17:04] and enjoys body corporate status. The transaction contemplated the acquisition by NSSA of a 84% stake in the equity of RMB through the purchase of shares. The transaction therefore constituted a ‘merger’ as defined in terms of section 2(1) of the Competition Act [Chapter 14:28]. Although the definition of the relevant market was clearly in two parts, i.e.,: (i) the provision of merchant banking services in Zimbabwe; and (ii) the provision of social security services in Zimbabwe, the examination of the proposed merger was confined to the merchant banking services part since that was where the competitive effects of the transaction were profound. The proposed acquisition was envisaged not to have competition impact in the provision of the social security services sector in Zimbabwe mainly because NSSA is an institution which enjoys statutory monopoly power in that sector. The merchant banking services market in Zimbabwe has four players, which are Interfin Merchant Bank; Renaissance Merchant Bank; Tetrad; and Ecobank. The market was found to be highly concentrated, as indicated by an HHI of 3114, implying that it was susceptible to serious competition concerns. Renaissance Merchant Bank’s share of the market was 21%. Table 1: Market shares and Concentration in the Merchant Banking Industry in Zimbabwe <table><tr><th>Financial Institution</th><th>Total Deposits (000 000)</th><th>Market Share (%)</th><th>HHI</th></tr><tr><td>Interfin</td><td>136</td><td>46</td><td>2116</td></tr><tr><td>Renaissance</td><td>60</td><td>21</td><td>441</td></tr><tr><td>Tetrad</td><td>56</td><td>19</td><td>361</td></tr><tr><td>Ecobank</td><td>40</td><td>14</td><td>196</td></tr><tr><td>Total</td><td>292</td><td>100</td><td>3114</td></tr></table> However; when compared to the whole banking industry, players in the merchant banking services market were considered to be insignificant, commanding a total of 9.12% of	Financial Institution	Total Deposits (000 000)	Market Share (%)	HHI	Interfin	136	46	2116	Renaissance	60	21	441	Tetrad	56	19	361	Ecobank	40	14	196	Total	292	100	3114	The Commission noted that the transaction was conglomerate in nature with some vertical linkages, and that it was not likely to substantially lessen competition, nor result in the creation of a monopoly situation, in the relevant markets. It was therefore agreed to approve the merger without any conditions.
Financial Institution	Total Deposits (000 000)	Market Share (%)	HHI																							
Interfin	136	46	2116																							
Renaissance	60	21	441																							
Tetrad	56	19	361																							
Ecobank	40	14	196																							
Total	292	100	3114																							

	the market. The transaction was examined as a conglomerate merger with vertical linkages. Various factors were considered in order to determine whether the transaction was likely to result in substantial lessening of competition, and they included: (i) market entry conditions; (ii) concentration; (iii) acquisition of market power; (iv) removal of efficient competition; and (v) likelihood of failure. It was found that the transaction was not likely to substantially lessen competition in the relevant market. Rather, it was found that it was pro-competitive in that it ensured recapitalisation of RMB, which was an ailing firm that was in dire need of financial rescue lest it risked withdrawal of its licence by the Reserve Bank of Zimbabwe. The transaction also found to have a number of other benefits of a public interest nature, such as creation and maintenance of employment, and the restoration of stability and confidence in the financial market since RMB owed other banks and corporates.	
3. Acquisition of National Foods Limited by Innscor Africa	The Commission in August 2011 received notification in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>] of the acquisition by Innscor Africa Limited of a controlling interest in National Foods Limited. The notification came as a result of a restrictive practices complaint received against Innscor Africa Limited and National Foods Limited, which unearthed Innscor's acquisition of National Foods and forced the notification. Innskor became a major shareholder in National Foods in 2003, holding 36% stake in that company, and progressively increased the stake to 49.9%. Innskor is basically a distributor of fast moving consumer goods, while National Foods is a manufacturer of basic commodities, including flour, mealie meal, cooking oil, salt and rice. The transaction was therefore vertical in nature since National Foods was a supplier to Innskor. The relevant market under examination was identified as the production and distribution of fast moving consumer goods (flour, cooking oil, mealie meal, rice and salt) in the whole of Zimbabwe. The competition analysis done established that the vertical merger had substantially lessened competition in the relevant markets. For instance, the dominating market share held by National Foods in the flour industry of 55% when combined with dominating market share held by Innskor in bread and confectionary of 41% created massive market power. The strong vertical linkages created by the merger strengthened the dominance of the merging parties in the relevant markets. Stakeholders consulted also raised serious competition concerns over the transaction.	The Commission noted that there were two issues on this matter, the first being failure by the merging parties to notify the Commission of the transaction within the time limit stipulated in the Competition Act [<i>Chapter 14:28</i>], and second, the intended conditions for the Commission's post-merger approval of the transaction that: (i) Innskor Africa maintains the current shareholding in National Foods at 37.82%, and not increase that shareholding without the approval of the Commission; (ii) Innskor be penalized for not notifying the Commission in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>] its acquisition of a controlling interest in National Foods; and (iii) Innskor give an undertaking to conclude a competition compliance agreement with the Commission. It was agreed that there was need to give the merging parties an

	However, whilst the Commission was in the midst of finalising the examination of the transaction, Innscor reduced its shareholding in National Foods to 37.82%. The change in shareholding was notified to the Commission in January 2012. The reduction of shareholding watered down the control of Innscor in National Foods since the second largest shareholder in that company, Tiger Brands, held 37.45%. The dilution of shareholding alleviated to some extent the competitive effects that came with the control. In light of the findings of the examination, the Commission’s Directorate recommended to the Commission that: i. Innscor Africa should not exceed the current shareholding in National Foods of 37.82% without the approval of the Commission; ii. Innscor Africa should be penalized for not notifying in terms of section 34A of the Competition Act [<i>Chapter 12:28</i>] its acquisition in 2007 of controlling interest in National Foods, and that the penalty fee be 0.05% of its annual turnover; and iii. Innscor Africa should give an undertaking to conclude a competition compliance programme and agreement with the Commission within twelve months.	opportunity to make representations on the proposed conditions through a stakeholder hearing. Also, some stakeholders had raised concerns on the transaction to which Innscor should be given an opportunity to respond.												
4. Acquisition of Zimbabwe Online (Pvt) Limited by Data Control & Systems (1996) Limited	In June 2012 the Commission received notification in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>] of the proposed acquisition of Zimbabwe Online (Pvt) Limited (ZOL) by Data Control & Systems (1996) (Pvt) Limited (t/a Liquid Telecom Zimbabwe). The acquirer was a licenced Internet Access Provider (IAP) in Zimbabwe seeking to acquire 100% interest in the target firm, which was an Internet Services Provider (ISP). The merging parties were therefore in a supplier-customer relationship, making the transaction a vertical merger as defined in section 2(1) of the Competition Act [<i>Chapter 14:28</i>]. The relevant market under examination was defined as the <i>provision of IAP services (wholesaling) and ISP services (retailing) of internet services in Zimbabwe</i>. As inferred by both the HHI and CR₄ concentration measures, the IAP services market was highly concentrated. In terms of revenue, the market was dominated by Liquid Telecom, while in terms of bandwidth it was dominated by TelOne. Revenue-Based Market Shares in the IAP Services Sector <table><tr><th>Company</th><th>Market Share (%)</th><th>HHI</th><th>CR₄</th></tr><tr><td>Liquid Telecom</td><td>41.92</td><td>1757.29</td><td>41.92</td></tr><tr><td>Powertel</td><td>23.67</td><td>560.27</td><td>23.67</td></tr></table>	Company	Market Share (%)	HHI	CR ₄	Liquid Telecom	41.92	1757.29	41.92	Powertel	23.67	560.27	23.67	The Commission noted that there were no major competition concerns in the transaction, and that the merger was not likely to substantially lessen competition or create a monopoly situation in the relevant market. There were however stakeholder concerns that since the merging parties are the biggest players in their respective markets, and that Liquid Investments, was a subsidiary of Econet Wireless, the dominant player in the mobile telecommunications services sector, the probability of market foreclosure once the merger was approved was high. It was therefore agreed to approve the merger on condition that the merged party should provide access
Company	Market Share (%)	HHI	CR ₄											
Liquid Telecom	41.92	1757.29	41.92											
Powertel	23.67	560.27	23.67											

	<table><tr><td>Africom</td><td>9.87</td><td>97.42</td><td>9.87</td></tr><tr><td>TelOne</td><td>9.56</td><td>91.39</td><td>9.56</td></tr><tr><td>Others*</td><td>14.98</td><td>14.98</td><td>-</td></tr><tr><td>Totals</td><td>100</td><td>2521</td><td>85.02</td></tr></table> *Others refer to small players whose market shares is or below 1% Bandwidth-Based Market Shares in the IAP Services Sector <table><tr><th>Company</th><th>Market Share (%)</th><th>HHI</th><th>CR₄</th></tr><tr><td>Liquid Telecom</td><td>22.58</td><td>509.86</td><td>22.58</td></tr><tr><td>Powertel</td><td>13.11</td><td>171.87</td><td>13.11</td></tr><tr><td>Africom</td><td>3.64</td><td>13.25</td><td>3.64</td></tr><tr><td>TelOne</td><td>45.67</td><td>2085.75</td><td>45.67</td></tr><tr><td>Others^</td><td>15</td><td>15</td><td>-</td></tr><tr><td>Totals</td><td>100</td><td>2796</td><td>85</td></tr></table> The determination of market shares and concentration levels in the ISP services market was very difficult in the absence of reliable statistics. However through stakeholders’ consultations and submissions by the merging parties ZOL is the dominant player in the market. Barriers to entry into the IAP services market were found to be relatively high, and included license fees and high capital requirements. The market was also regulated by the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ). However, the ISP service market had limited barriers to entry and thus had a lot of players. The market was also not regulated. Most of the stakeholders consulted over the transaction raised concerns over the proposed merger as there was likelihood of foreclosure of the market by the merged entity. It was, however, found that the market is regulated by POTRAZ. The regulator’s functions among other things are to monitor and eliminate elements of price discrimination, predatory pricing, and cross subsidization. An analysis was made of the following factors: (i) market entry conditions; (ii) concentration; (iii) acquisition of market power; (iv) countervailing power; (v) removal of efficient competition; and (vi) likelihood of failure. The analysis indicated that the transaction was not likely to substantially lessen competition in the provision of IAP and ISP services.	Africom	9.87	97.42	9.87	TelOne	9.56	91.39	9.56	Others*	14.98	14.98	-	Totals	100	2521	85.02	Company	Market Share (%)	HHI	CR ₄	Liquid Telecom	22.58	509.86	22.58	Powertel	13.11	171.87	13.11	Africom	3.64	13.25	3.64	TelOne	45.67	2085.75	45.67	Others^	15	15	-	Totals	100	2796	85	to other internet access and service providers as was the case before the merger.
Africom	9.87	97.42	9.87																																											
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5. Acquisition of Pelhams Limited by TN Holdings Limited	The Commission in March 2012 received notification in terms of section 34A of the Competition Act [Chapter 14:28] of the proposed acquisition of Pelhams Limited by TN Holdings Limited. The merging parties were both listed on the Zimbabwe Stock Exchange (ZSE). TN Holdings acquired 56.59% of Pelhams in two separate stock market transactions of 36% and 20.59% respectively. TN Holdings’ intentions were to acquire more shares in Pelhams and ultimately delist it from the ZSE and operate it as its	The Commission noted that merger was horizontal in nature, and therefore would result in the reduction of the number of competing players in the relevant market. Most of the furniture manufacturers were customers of Pelhams, and																																												

subsidiary. The transaction would thus enable TN Holdings to expand its geographical reach by establishing a branch network throughout the country. One of its other subsidiaries, TN Bank, would provide Pelhams' clients access to credit finance which would boost demand for Pelhams products. Pelhams clients would also have access to the TN Bank's Cash Card to facilitate payments in the face of limited cash in circulation in Zimbabwe.

The merging parties operated in the broad furniture industry where both were into the manufacturing and retailing of furniture. The relevant product market under examination, in its functional dimension, was therefore identified as *the manufacturing and retailing of furniture*. The relevant geographic market was identified as *the whole of Zimbabwe*.

It was found that the the furniture retailing market would be concentrated following the transaction, with a post-merger HHI of 2459 and a CR₄ of 77%, indicative of the likelihood of serious competition concerns and the removal of efficient competition.

Pre-Merger Market Shares and Concentration In The Furniture Retailing Market

Company	No. of Outlets	Market Share	Concentration	
			HHI	CR ₄
TN Harlequin Luxaire	39	26.6%	707	27%
Pelhams	25	16.7%	279	17%
TV Sales & Home	19	19.7%	388	20%
Coloursell	14	6.9%	47	7%
Teecherz	13	6.5%	42	-
Station Furniture	13	5.9%	35	-
Meikles Group	8	7.9%	62	-
Others*	-	9.8%	10	-
Totals	131	100%	1570	71%

Post-Merger Market Shares and Concentration In The Furniture Retailing Market

Company	No. of Outlets	Market Share	Concentration	
			HHI	CR ₄
TN/ Pelhams	64	43.3%	1875	43%
TV Sales & Home	19	19.7%	388	20%
Coloursell	14	6.9%	47	7%
Teecherz	13	6.5%	42	7%
Station Furniture	13	5.9%	35	
Meikles Group	8	7.9%	62	
Others*	-	9.8%	10	
Totals	131	100%	2459	77%

All the stakeholders consulted were of the view that the merger should not be approved as it raised serious competition concerns. The major reason given was that TN Holdings would foreclose the market to other furniture manufacturers. Pelhams had been reported to be the largest customer to most of the furniture manufacturers. Since TN

they expressed the fear that once the merger was approved TN was likely to renege on good business relationships existing between Pelhams and other furniture manufacturers, thereby foreclosing the market for them.

It was also noted that the Directorate had recommended rejection of the merger, but agreed that a stakeholder hearing into the transaction be held to give the merging parties an opportunity to make representations on the matter.

	Holdings did not deal with anyone, there was the possibility that the merged entity may restrict the supply of furniture by other furniture manufacturers the same way that TN was currently doing, and engage in monopoly pricing in the future. It was found that both the horizontal and vertical aspects of the transaction would likely result in a substantial reduction or lessening of competition in the relevant market because the merging entities are the two largest players in the industry. The transaction would most likely result in a substantial increase in concentration, given the relatively larger market shares of the merging parties. The Directorate's recommendations were therefore that the proposed merger be rejected.	
6. Acquisition of the VISA Point of Sale Acquiring Business of Standard Chartered Bank by CBZ Bank Limited	In August 2012, the Commission received notification in terms of section 34A of the Competition Act [Chapter 14:28] of the proposed acquisition of the Visa Point of Sale (PoS) acquiring business of Standard Chartered Bank Zimbabwe Limited (SCBZ) by CBZ Bank Limited. Both CBZ and SCBZ are principally engaged in the business of retail and commercial banking, as well as provision of other financial services. SCBZ and CBZ wished to enter into a partnership to share Visa PoS acquiring infrastructure, whereby SCBZ would cede its Visa PoS acquiring business to CBZ and in turn CBZ would accept processing of all Visa cards issued by SCB, or any other bank, on their PoS terminals. CBZ would accept SCBZ and any other bank's Visa cards on its acquiring platform. The relevant market was defined as the provision of Visa Point of Sale Acquiring services in Zimbabwe. CBZ and SCBZ were the only two financial institutions in Zimbabwe involved in the Visa PoS Acquiring business. Their pre-merger market shares based on revenue realised from the business showed a highly concentrated market with an HHI of 6,800. Even though it was found that the transaction would likely result in substantial lessening of competition, and even result in the creation of a monopoly situation, in the relevant market, the Directorate recommended the approval of the merger on the basis that SCBZ had made a decision not to remain in the Visa PoS Acquiring business, and that business would exit the market if the transaction was not allowed to proceed. It was also noted that the transaction would guarantee smooth operation of issuing and acquiring arrangements between banks without unnecessary duplication of services.	The Commission approved the merger because of the high public interest benefits of the transaction.
7. Acquisition of Premier Milling Company by Croco Holdings	In November 2011 the Commission received from Chemco Holding Limited notification in terms of section 34A of the Competition Act [Chapter 14:28] of the proposed acquisition of one of its subsidiaries, Premier Milling Company (Pvt) Limited, by Croco Holdings. Chemco Holdings Limited has interests in a mainly	The Commission noted that since the transaction was of a purely conglomerate nature with no horizontal and/or vertical elements, it did not constitute a merger as defined in terms of

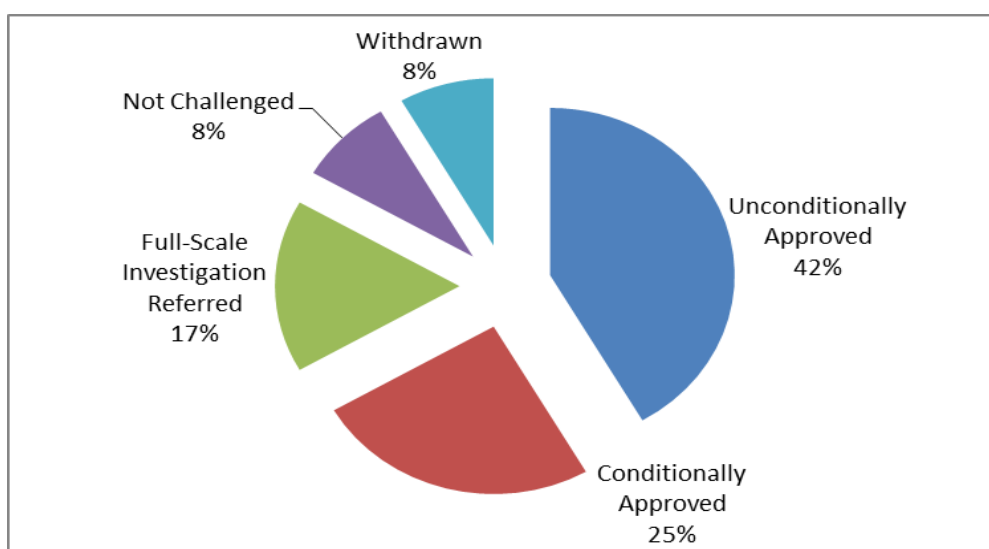
	agricultural-based varied group of companies, which manufacture and distribute agricultural chemicals, agricultural supplies, timber and related products, as well as building and hardware supplies. Croco Holdings, on the other hand, is an investment company with interests in the motor industry, as well as the properties industry. In 1997, Chemco Holdings disposed of its milling operations under the name of Premier Milling Company to a company called Clearwater Estates (Pvt) Limited. As part of that transaction, Clearwater Estates was to lease the milling factory and ancillary buildings from Premier Milling Company, as the purchaser's intention was to continue milling operations. Premier Milling therefore remained a company owning a single complex building. As such, and/or as required in International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS), Chemco reported Premier Milling as an Investment Property Owning Company. The Commission's Directorate had noted that Croco Holdings had a subsidiary in the properties industry, Croco Properties and therefore established a link between the two since Premier Milling was an Investment Property Owning Company. That position was later challenged by the merging parties who argued to the satisfaction of the Commission Directorate that IAS and IFRS provide that all immovable property not being used by the owner for their own operations should be disclosed in the financial statements of the owner as an investment property. Premier Milling, therefore, could not be classified as operating in the properties industry and therefore the transaction was of a purely conglomerate nature, which was not a 'merger' as defined in terms of section 2(1) of the Competition Act [Chapter 14:28].	section 2(1) of the Competition Act [Chapter 14:28]. It was therefore agreed not to challenge the transaction.
8. Acquisition of Haggie Rand Zimbabwe by Industrial Development Corporation of South Africa	In July 2012, the Commission received notification in terms of section 34A of the Competition Act [Chapter 14:28] of the proposed acquisition of Haggie Rand Zimbabwe by the Industrial Development Corporation of South Africa (IDC SA). IDC SA intended to acquire 88% of Anglo South Africa Capital (Pty) Limited (ASAC)'s stake in Haggie Rand Zimbabwe, with the remaining 12% being acquired by another company called Main Street on condition that if that company failed to raise the required funds IDC SA would acquire the lot. Haggie Rand Zimbabwe is a manufacturer and distributor of wire, wire ropes, grinding media, cast and related products in Zimbabwe. IDC SA is a national development finance institution set up to promote economic growth and industrial development of South Africa. The transaction fell within the ambit of the term 'merger' as defined in the Competition Act [Chapter 14:28]. Even though it was largely conglomerate in nature, it had both horizontal and vertical elements. The relevant market was identified as	The Commission noted that the transaction was not likely to lessen substantially the degree of competition in Zimbabwe, nor result in a monopoly situation which would be contrary to the public interest, and agreed to unconditionally approve the merger.

	the manufacture and distribution of wire, wire rope, grinding media, cast and related products in Zimbabwe. The transaction did not change or alter the structure of the relevant market since the acquiring party was not a player in that market. Most of stakeholders consulted over the proposed merger Various stakeholders have been consulted over the proposed merger did not raise serious competition concerns over the transaction, with a number of them actually considering it to be pro-competitive. Besides being found not to likely lessen substantially the degree of competition in the relevant market, nor to result in the creation of a monopoly situation, the transaction was also found to be in the public interest. The investment by IDC SA in Haggie Rand Zimbabwe was envisaged to restore the operations of the Zimbabwean company in terms of capacity utilisation, and subsequently employment.	
9. Acquisition of Tractive Power Holdings by Zimplow Limited	The Commission in July 2012 received notification in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>] of the proposed acquisition of Tractive Power Holdings Limited (TPHL) by Zimplow Limited. The acquiring firm intended to acquire a 57.21% shareholding stake in the target firm. Zimplow is a public company listed on the Zimbabwe Stock Exchange (ZSE), and is the biggest manufacturer of animal traction agricultural equipment in Zimbabwe and Southern Africa. Its major products are ploughs, cultivators, harrows, planters, high wing ridges, and hoes, and their spare parts. Tractive Power was a retailer of internationally recognized brands of diverse products, ranging from farm equipment to motor vehicles and heavy earth moving equipment, through its four operating units, namely Northmec, Farmec, Puzey & Payne and Barzem. The relevant market under examination was defined as <i>the production and distribution of animal drawn implements, and distribution of tractors and tractor drawn implements in the whole of Zimbabwe.</i> Stakeholders consulted included the merging parties' competitors and customers. All the stakeholders did not raise concern about the transaction. One of them explicitly stated that the transaction was necessary since it would enhance the operation capacity of the merging firms. The economic and competition analysis of the transaction also showed that the transaction was not likely to substantially lessen competition in the highly contestable relevant market.	The Commission noted that even though the merging parties were operating in the same broad market of provision of farm equipment, the transaction was not likely to lessen substantially the degree of competition in the relevant market. It was therefore agreed to approve the merger without any conditions.
10. Acquisition of Matetsi Water Lodge by Elijay Investments	In September 2012 the Commission received notification in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>] of the proposed acquisition of Matetsi Water Lodge by Elijay Investments.	The Commission noted that the transaction did not raise serious competition concerns, and generated significant public interest

	Matetsi Water Lodge was a private company wholly owned by Hathanay Investments, a subsidiary of the Rainbow Tourism Group. It was a safari lodging company that offered activities such as game drives, bird watching and river cruising in the Victoria Falls area. Elijay Investments was specifically formed to acquire Matetsi Water Lodge. The relevant product market was identified as <i>the provision of touristic safari activities</i>, while relevant geographic market was identified as <i>the Victoria Falls area</i>. Stakeholder consultations held indicated wide support for the transaction. In that regard, it was submitted that the safari lodges sector is structured in such a way that there is serious interdependence among the players in the sense that a safari lodge cannot exclusively provide for the services that a tourist accommodated at that particular lodge may require. As a result of that, the closure of Matetsi Water lodge was affecting the operations of the other lodges that used to refer their clients to the Lodge for those activities that they could not provide themselves. It was also submitted that the Matetsi area had been subjected to a lot of poaching activities and that had negatively impacted on the economy, particularly the tourism industry. Extinction of animals around Matetsi Water Lodge would also affect the other safari lodges in the area. The economic and competition analysis of the transaction also showed that since it was of a conglomerate nature, it did not raise the same serious competition concerns as those associated with horizontal and vertical mergers. In that regard, it was noted that the acquiring party, Elijay Investments had not carried out any business before, including any safari and tourism business, and its acquisition of Matetsi Water Lodge would not alter or change the structure of the relevant market to result in a lessening of competition in that market. With regards public interest considerations, it was noted that Matetsi Water Lodge had not been operational since January 2012 due to financial constraints, and that had exposed the area to poaching activities, and had also rendered a total of 110 employees jobless.	benefits, and agreed to approve the merger.
11. Acquisition of TN Bank by Econet Wireless	The Commission in August 2012 received from TN Holdings Limited notification in terms of section 34A of the Competition Act [Chapter 14:28] of the proposed acquisition of 45% shareholding in TN Bank by Econet Wireless. The target firm, TN Bank, is a commercial bank, while the acquiring party, Econet Wireless, is a mobile telephone network service provider. The merging parties were already partners in the provision of a mobile money transfer facility called EcoCash, under which Econet provided the mobile network connectivity for the money transfer facility, and TN Bank provided the banking license as per the regulatory requirements of the Reserve Bank of Zimbabwe.	The Commission noted that even though the target firm, TN Bank, is a relatively small player in the banking services sector, the transaction would raise some competition concerns in the form of market foreclosure if Econet Wireless, the dominant player in the mobile telecommunications services sector, restricted

	The relevant market under examination was defined as the provision of mobile banking services in the whole of Zimbabwe. Econet was found to be the market leader, and also the dominant player, in the provision of mobile telecommunications services in Zimbabwe. TN Bank was however found to be a relatively small player in the provision of banking services. With the exception of the Reserve Bank of Zimbabwe, all the stakeholders consulted on the proposed merger raised concerns over the transaction. The stakeholders were of the view that post-merger; Econet Wireless might refuse to deal with other banking institutions intending to provide mobile banking services by not availing the mobile connectivity required by banking institutions to offer the relevant services. The economic and competition analysis of the transaction established the possibility of market foreclosure as a result of the merger between Econet Wireless and TN Bank. In line with the two-test in merger regulation, the examination established that the transaction may lessen competition in the relevant service market in the future if approved without the necessary conditions to address the stakeholder concerns that had been raised, which were real.	its EcoCash mobile money transfer facility to TN Bank. It was therefore agreed that the merger be approved on condition that Econet Wireless avails its EcoCash mobile money transfer facility to other banking institutions than TN Bank.
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Graph 2: Outcome of Merger Examinations in 2012



4.2.2 Other Competition Activities

(a) Voluntary Peer Review

The report on the voluntary peer review of Zimbabwe's competition policy and law under the auspices of the United Nations Conference on Trade and Development (UNCTAD) was considered and adopted at the Twelfth Session of the Inter-Governmental Group of Experts on Competition Law

and Policy (IGE) that was held in Geneva, Switzerland, during the period 9-13 July 2013. The exercise was undertaken as a tripartite event involving also the review of competition policies and laws of Zambia and Tanzania.

The various legal provisions of the Competition Act [*Chapter 14:28*] of Zimbabwe (ZCA) were assessed, and recommendations made to address the shortcomings. Recommendations were also made to the Government and the Commission on competition law and policy implementation improvements.

Box 4: Peer Review Findings and Recommendations

Legal Provisions of ZCA			
UNCTAD Model Law Provision	Provision in ZCA	Shortcomings	Recommendations
Title of the Law	Section 1	-	-
Objectives or Purpose of the Law	Preamble	No stand-alone Section to provide for this important part of the Law.	Include a section providing for the objectives or purpose of the Law.
Definitions	Section 2	The language used providing for most definitions are not in concurrence with commonly used 'competition language' and are used too interchangeably and are confusing.	- Those definitions that are generally part of a substantive rule, e.g., the prohibition of restrictive practices, should be shifted from Section 2 to the Part of the ZCA that contains the respective substantive provision. - Clearer definitions and use of important common competition language for terminologies should be introduced to avoid mix ups which may open unnecessary arguments. - Guidelines to be adopted by the CTC to explain core competition law concepts, such as the definition of the relevant market.
Scope of Applications Definitions	Section 3	Economy wide with no limitations that provide for concurrent jurisdiction with sectoral regulators.	Clear separation of jurisdiction over competition issues in regulated sectors should be introduced in the Law.

Anti-competitive Agreements	Section 2	- No clear line of demarcation between anticompetitive agreements, the abuse of market power and acts of unfair competition. - Abuse of dominant position issues are provided for under <i>per se</i> prohibition rule and under Section 2 on restrictive practices. - The Law has indirectly dealt with rule-of-reason referring to restrictive practices related to agreements as defined in Section 2 of the ZCA. Those which are provided under the First Schedule are called 'unfair business practices' and are <i>per se</i> prohibited.	- Introduce a general prohibition of anti-competitive agreements and concerted practices, followed by a non-exhaustive list of examples. - Clearly distinguish between agreements that are <i>per se</i> prohibited and those that fall under the rule-of-reason. - No mix of specific types of anti-competitive agreements with acts of unfair competition.
	Part 8, 9 and 10 of the First Schedule		
Acts or behaviours constituting an abuse of dominant position or market power	Section 2		The conduct listed in the First Schedule should be moved to the Parts of the ZCA where it belongs (i.e., anti-competitive agreements or acts of unfair competition).
			- Introduce a general prohibition of the abuse of a dominant position, followed by a non-exhaustive list of examples. - The language used in defining dominance should be consistent with common competition language that is simply understood by users. - To be discussed whether a rebuttable presumption of dominance based on a specific market share threshold should be introduced.
Notification, investigation and control of mergers.	Section 34 and 34A	- Investigation procedure, in particular timelines, not specified. - Joint ventures and pure conglomerate mergers are not captured by the definition of a merger. - Substantive merger control test spread over several provisions.	- Include a binding timeframe for the review of mergers. - Include the establishment of a full-function joint venture and pure conglomerate mergers in the definition of mergers. - Provide for substantive merger control test in a single provision.
Some possible aspects of consumer protection	Part 8 of the First Schedule	There is no clear demarcation of provisions to deal with competition and those which deal with consumer both are categorised under the First Schedule.	Based on the finding that the Consumer Protection Bill will be administered by a different body, consumer protection aspects can be dropped from the competition law. This should only be done after the Consumer Law is out so as not to

			create a gap that will expose consumers to exploiters. Alternatively, a remedy can be by drawing a line of demarcation between the two.
Investigation Procedures	Section 34C	Lack of express provision on leniency programme for cartel members.	Introduce express provision on leniency programme for cartel members.
Relationship between competition authorities and sector regulators	Section 3(a) and (b)	Not provided for specifically, although one regulatory authority has specific provision on how competition matters should be referred to CTC.	The competition law should acknowledge the co-existence of sectoral regulators and limit itself accordingly. Section 59 of the Electricity Act should be strengthened and used as a model for interactions between sectoral regulators and CTC.
Establishment, functions and powers of the administering authority	Section 4, 5, 6 and the Second Schedule	• Too much power is vested on the Minister responsible for the CTC and Minister of Finance; it poses a threat to the independence of the Commission. • Section 6 ZCA unclear as to who is vested with the power to appoint Commissioners. • Tenure of Commissioners of a period of three years is too short to allow for Commissioners to acquire required competition law expertise and build up an institutional memory.	• Minister(s) should be stripped of some powers to ensure that members have a better security of tenure for them to function more efficiently. • Policy to place the competition and economic regulation institutions under one Ministry so as to ease policy decision patterning the competition and regulatory interaction. • Clarify that the Minister in consultation with the President shall appoint the Commissioners. • Tenure of Commissioners to be extended t 5 to 7 years.
Powers of enforcement	Section 30, 31 and 32	The actual enforcement of Commission orders is done by courts. This may create multiplicity of procedures, and may cause unnecessary delays in delivery of justice.	CTC could assume some powers of actual enforcement and state those that the courts should deal with, mostly the criminal sanctions, particularly imprisonment.
Sanctions and remedies (actions for damages)	Section 31, 44 and 45	Provided in using a general and wide benchmark as a result there is not enough deterrence to offenders. Omission of some offence such as breach of a merger condition following conditional approval of a merger.	Provide ZCA specific sanctions to bring about deterrence to offenders. Provide for the identified omitted offense in the ZCA.
Appeals	Section 40	Judicial review can be	Only one court should have

		exercised by the High Court and the Administrative Court.	jurisdiction over competition cases. Competition cases should be heard by specialized judges.
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Recommendations Addressed at the Government

- Drafting of the new law should be preceded by a comprehensive study that should enlighten details regarding the economics and legal aspects of the competition regime based on requirements of the contemporary Zimbabwean social, economic and political contexts. The study should form basis for development of a comprehensive competition policy and eventually the new law. Furthermore, taking into account possible policy conflicts between the competition and the tariff mandate of the CTC, as well as the fact that combining these two mandates in one institution is highly unusual, the study should address the question whether or not to maintain the current mandates of the CTC. In fact, it is recommended to consider unbundling the two mandates and assigning only the competition mandate to the CTC.
- It is recommended that the Government increase the CTC's budget to optimal levels based on the decade-long experience of implementation under the prevailing limited budget. Comparisons should be with the sector regulators, owing to the fact that they serve the same entities in the economy, more so that CTC's mandate is wider than the sector specific regulators. Among sources of the increase to be considered are Government grants and introduction of a statutory regime that will provide for a mechanism for CTC to receive funds from the regulate sectors.
- Salaries for the CTC personnel should also be substantially increased for obvious reasons of motivation on their part and retention of staff on the CTC's part as an employer.
- Placement of competition and regulatory authorities under one central Ministry, so as to avoid competing and conflicting policy objectives, as well as the disjoint between competition and regulation in Zimbabwe. This will ease the implementation of the coexistence of competition and regulatory authorities as economic entities that serve the same consumer in the Zimbabwean economy, hence the need to share information, financial and other resources for the benefit of the consumer and the economy.

Recommendations Addressed at the CTC

- Establishment of a sound Information and Communication Technology Department at the CTC, which shall take care of website, electronic documentation of proceeds and archives and a library.
- Tailor made training on competition to staff, Commissioners, appellant bodies, university staff, practicing lawyers and regulated sector staff as a routine practice for between 3 to 5 years, so as to impart competition knowledge and skills into the Zimbabwe competition and regulatory framework.
- The CTC Board revamps the advocacy component for competition issues. Opportunities readily available such as engagement with the Bar association, the academia and the trade and commerce should be ceased immediately because they can be carried out by resources compliment currently available at CTC.
- CTC should reorient its enforcement practice by conducting its case determination function in an inquisitorial approach that shall exonerate itself from the liability of compliance to requirements of separation of powers currently haunting its functioning.

Further Recommendations

Establishment of a competition law and policy course at the University, so as to ensure availability of basic competition training in Zimbabwe.

In preparing for the peer review exercise that was held in Geneva in July 2012, the Commission was assisted by a Preparatory Committee of relevant Government Ministries and Departments that mapped

out Zimbabwe's position at the Tripartite Peer Review (TPR). The success of that peer review exercise was largely attributed to that Preparatory Committee.

Most of the recommendations of the peer review were accepted Government of Zimbabwe for implementation. It was however noted that the recommendation to place the competition and economic regulation institutions under one Ministry so as to ease policy decision patterning the competition and regulatory interaction would be difficult to implement since sector regulators in Zimbabwe have specialised functions that are aligned to specific Ministries.

Following the July 2012 peer review exercise in Geneva, the Commission transformed the Preparatory Committee that mapped out Zimbabwe's position at the TPR into an Inter-Organisational Committee on the implementation of the peer review recommendations. The primary function of the Inter-Organisational Committee is to assist the Commission in overseeing the effective implementation of the peer review recommendations. The Committee is chaired by the Commission, and is composed of representatives of the following relevant Government Ministries and Departments, and other public organisations:

- Ministry of Industry and Commerce
- Ministry of Finance
- Ministry of Economic Planning and Investment Promotion
- Ministry of Constitutional and Parliamentary Affairs
- Ministry of Justice and Legal Affairs
- Ministry of State Enterprises and Parastatals
- Ministry of Regional Integration and International Cooperation
- Ministry of Small and Medium Enterprises and Cooperative Development
- Attorney-General's Office
- Office of the President and Cabinet
- Office of the Prime Minister
- National Incomes and Pricing Commission
- Consumer Council of Zimbabwe
- National Economic Consultative Forum

UNCTAD Secretariat put up a project proposal for implementing the recommendations of the TPR of competition law and policy in the three peer reviewed countries of Zimbabwe, Zambia and Tanzania. The objective of the project is to assist the national competition authorities of the three countries to enhance their enforcement capacity, including training of the staff of the authorities and increasing awareness among all stakeholders on the benefits of competition law and policy. The project is to be implemented over a three-year period.

Table 20: UNCTAD Project Proposal for the Follow-Up to the Peer Review Recommendations on Zimbabwe

National Level Activities			
Year	Activity	Inputs	Intended Outputs
2013	Preparation of legal inventory in relation to competition in Zimbabwe.	Local expert UNCTAD input (backstopping)	Legal inventory study in relation to competition in Zimbabwe. Target Group: Government, Legislature, business community, CTC.

2013	Preparation of a comprehensive competition policy for Zimbabwe.	Regional/ local expert UNCTAD input (backstopping)	Competition policy for Zimbabwe. Target Group: Government, Legislature, CTC.
2014	Drafting of a new competition law for Zimbabwe taking into consideration the findings and recommendations in the peer review report for Zimbabwe.	International expert Local expert UNCTAD (backstopping)	New Competition Act for Zimbabwe
2014	Conduct three seminars with the participation of foreign experts and practitioners on the role of competition law and its benefits for the economy addressed at: (i) government officials, including sector regulators, lawyers and academics (3 days); (ii) judges (1 day); and (iii) business community (1 day). (In total, 5 working days)	International expert/ trainer Regional expert/ trainer Local expert 2 missions consultants 3 missions UNCTAD UNCTAD input (backstopping) CTC input (hosting workshops and handling internal organizational issues).	Increased awareness of competition issues. Target Group: Government, Legislature, business community, lawyers, academics and consumers.
2015	Organise one-day seminars for the business community in the country's five major centres, namely, Harare, Bulawayo, Gweru, Mutare and Masvingo. The targeted participants of the seminars to include local branches of business associations (CZI, ZNCC, Chamber of Mines), labour unions, farmers' organisations, and individual companies.	Resource persons from the CTC Resource person from the Consumer Council of Zimbabwe	Increased awareness of competition issues. Target Group: Government, Legislature, business community, lawyers, academics and consumers.
2014-2015	National media campaign through print and electronic media: - publication in national newspapers of articles on the theory and practice of competition policy and law; - radio programmes for 30 minutes per month on the main national channel, showing the benefits of competition and consumer protection.	Local consultant specialized in TV and radio programme production Publication fees of monthly newspaper articles 30-minute radio	Increased awareness of competition issues. Target Group: Government, Legislature, business community, lawyers, academics and consumers.

		programmes (platinum time band) 30-minute television programmes (diamond time band)	
2013	Create a quarterly electronic newsletter which provides news about competition law enforcement from Zimbabwe, the region and the world. Use the newsletter also to publish the summary of the latest CTC decisions. The newsletter should have a distribution list composed of business associations, consumer associations, government officials in relevant Ministries, sector regulators, Parliament, Bar Association , and academics.	Publication of 500 copies of the newsletter per quarter CTC input (officers of the CTC, COMESA or other national competition authorities from the region)	Increased awareness of competition issues. Target Group: Government, Legislature, business community, lawyers, academics and consumers.
2015	Build an internet-based system for businesses to file complaints about competition issues.	Opening the relevant window on the Commission's website	Increased awareness of competition issues. Target Group: Government, Legislature, business community, lawyers, academics and consumers.
2015	Write articles to be published in major national law journals and scholarly papers on competition law and policies.	Southern African Business Review article publication fees CTC input (writers, CTC lawyers and economists)	Increased awareness of competition issues. Target Group: Government, Legislature, business community, lawyers, academics and consumers.
2015	Assistance to the Law Society of Zimbabwe and the Legal Resources Foundation to re-launch their journals and magazines, which have been stopped due to lack of funding, for use in the publishing of articles on competition law and policies.		Increased awareness of competition issues. Target Group: Government, Legislature, business community, lawyers, academics and consumers.
2013	Study on the pricing models of utilities and regulatory charges in Zimbabwe.	International/ regional expert Local expert 1 mission consultant UNCTAD input	

		(backstopping)	
Regional Level Activities			
Year	Activity	Inputs	Intended Outputs
2014	Preparation of guidelines for conducting dawn-raids on the international best practices.	International expert 1 mission consultant 1 mission UNCTAD UNCTAD input (backstopping)	Institutional capacity for carrying out dawn-raids Target Group: staff of NCAs, Judiciary and police
2015	Select personnel to carry out dawn-raids and provide 5-day training based on the guidelines.	International experts/trainers 3 missions consultants 2 missions UNCTAD UNCTAD input (backstopping)	Institutional capacity for carrying out dawn-raids Target Group: staff of NCAs, Judiciary and police
2014	A two-day regional seminar on competition law enforcement.	International expert/trainer Regional expert/trainer 2 missions consultants 2 missions UNCTAD UNCTAD input (backstopping)	Improved adjudication and judiciary review capacity Target Group: members of the competition tribunals and other members of the Judiciary, including magistrates and judges.
2015	A two-day regional training workshop on competition law enforcement and case handling for the Judiciary.	International expert/trainer Regional expert/trainer 2 missions consultants 2 missions UNCTAD UNCTAD input (backstopping)	Trained judges with enhanced understanding and skills to handle competition cases. Target Group: Judiciary, including magistrates and judges.
2015	A three-day regional training workshop on investigative procedures and case handling for investigating officers.	International expert/trainer Regional expert/trainer 2 missions consultants	Enhanced enforcement capacity and understanding of competition principles, and developed investigation and litigation skills. Target Group: staff of NCAs of

		2 missions UNCTAD UNCTAD input (backstopping)	Tanzania, Zambia and Zimbabwe.
2015	Development of competition law and policy, and competition economics courses in the main university in the capital city of each of the three reviewed countries.	Regional expert/ academic 1 mission consultant Universities involved	Trained human resources and increased awareness of competition issues. Target Group: academics, university students, staff of the NCAs.

Also following the July 2012 TPR in Geneva, the Commission, in collaboration with UNCTAD Secretariat, approached a number of development partners for assistance in the funding of the activities under the UNCTAD Project Proposal on the follow-up to the peer review recommendations. The development partners approached included the following:

- The World Bank (WB)
- European Union (EU)
- United Nations Development Programme (UNDP)
- United States Agency for International Development (USAID)
- UK Department for International Development (DFID)
- African Capacity Building Foundation (ACBF).

In November 2012, UNCTAD Secretariat held in Harare, Zimbabwe, two events related to the implementation of the recommendations of the peer review: (i) a Dissemination Stakeholders Seminar on 19 November 2013; and (ii) a Staff Training Workshop on 20 November 2013.

The Dissemination Stakeholders Seminar was well attended, with over 90 participants drawn from: (i) Government Ministries and Departments; (ii) sector regulators; (iii) the Judiciary; (iv) business and consumer associations; (v) professional associations; (vi) the Academia; (vii) large corporations; (viii) law firms; (ix) the Media; and (x) development partners. Besides disseminating the results of the peer review, the seminar held two round table discussions on the important topics of *Importance and Role of Competition Policy and Law and Economic Development* and *Relationship between Competition Authorities and Sector Regulators*.

The Staff Training Workshop was attended by members and professional staff of the Commission. The two workshop topics were *Investigative Techniques, Economic Analysis, and Enforcement* and *Adjudication of Competition Cases*.

Resource persons at the two events came from UNCTAD Secretariat and competition authorities of Botswana, Mauritius, Namibia, Tanzania and Zambia.

(b) COMESA Competition Regime

The Commission was selected by the COMESA Competition Commission (CCC) to be the Working Group on Merger Control to analyse and comment on the deliverables by the EU TradeCom consultants on the regional competition authority's operational guidelines and forms. The Commission's mandate included: (i) merger regulations; (ii) merger notification forms; and (iii) formular for determining thresholds on mergers. The following other national competition authorities in the region were also selected as the other working groups:

- Working Group 2, Zambia: (i) horizontal/vertical agreements regulations; and (ii) formular for sharing revenue;
- Working Group 3, Kenya: all statutory forms;
- Working Group 4, Mauritius: leniency programme;
- Working Group 5, Egypt: (i) intellectual property and technology transfer regulations; (ii) formular for determining abuse of dominant position;
- Working Group 6, Swaziland: public interest considerations.

The Commission accordingly made comments, on the TradeCom consultants' deliverables on: (i) *Determining Filing Thresholds for the Merger Control Procedure under the COMESA Competition Regulations (2004)*; (ii) *Guidelines on Substantive Merger Assessment under the COMESA Competition Regulations (2004)*; (iii) *Notice of Proposed Merger Form*; (iv) *Statement of Merger Information Form*; and (v) *Notice of Decision in Respect of Proposed Merger Form*, in preparation for the second workshop on the Implementation of a Regional Competition Regulatory Framework in the Common Market for Eastern and Southern Africa (COMESA) held in Nairobi, Kenya, in March 2012.

(c) Competition Advocacy and Awareness

The Commission in February 2012 made a presentation to the Parliamentary Portfolio Committee on Industry and Commerce on its merger control activities. The presentation was based on the mergers and acquisitions that the Commission made determinations on since the effective commencement of its operations in 1999, and explained the substantive test used in the determination of mergers. It also gave an assessment of the economic benefits of the mergers that the Commission approved with conditions over the years. Clarifications were made to the Parliamentarians on some of the major merger determinations made by the Commission, particularly on the 2001 *Coca-Cola/ Cadbury-Schweppes merger* and the 2009 *Schweppes Zimbabwe/ Delta Beverages merger*. The Commission's presentation and clarifications were well received by the Parliamentary Portfolio Committee, which admitted that it now has a better knowledge and appreciation of the Commission's merger control operations and activities.

A project proposal on the undertaking of competition awareness campaigns in various centres of the country was worked out and approved for implementation. The campaign included educating small and medium-sized enterprises (SMEs) on competition policy and law so that the SMEs could benefit from the Commission's services.

As a follow-up to the previous year's stakeholder workshops on the "*Socio-Economic Impact of Excessive Pricing of Public Utilities*" that were held in Harare and Bulawayo in May and June 2011 respectively, the Commission in January 2012 held a follow-up stakeholder workshop to discuss with key stakeholders the implementation of the recommendations that had been made at the previous workshops. The follow-up workshop was well attended, with over 50 participants drawn from Government Ministries, sector regulators, business and consumer associations, and private companies. The recommendations of the workshop were submitted to the relevant Government authorities for policy formulation purposes.

At its request, Total Zimbabwe, the largest petroleum distribution company in Zimbabwe, was given training in November 2012 on the implementation and enforcement of competition policy and law in Zimbabwe. The training was aimed at the company's staff and fuel dealers. Following the training, the company indicated willingness to conclude a competition compliance programme and agreement with the Commission.

The Commission also conducted a one-day lecture on Zimbabwean competition policy and law at the University of Zimbabwe's Department of Private Law during the month of November 2012.

The Commission's Chairman was invited to make a presentation at the Chamber of Mines' 73rd Annual General Meeting and Conference that was held in Victoria Falls in May 2012 under the theme *"Powering the Mining Industry for Growth and Development"*. The Chairman's presentation was on *"Positioning Enablers for Effective Complimentary and Supportive Role in Mineral Development: Challenges and Solutions"*. The Director of the Commission also contributed to a Chapter on competition policy and law in a Chamber of Mines publication.

(d) Competition Networking and Cooperation with other Competition Authorities

Following its admittance in May 2011 as a member of the International Competition Network (ICN), the Commission during the 2012 year under review was a regular and active participant in the Network's various work programmes, particularly the teleseminars of the Agency Effective Working Group, the Cartel Working Group, and the Unilateral Conduct Working Group.

After a period of over ten years, the Commission was invited to, and attended, the 11th Global Forum on Competition of the Organisation of Economic Co-operation and Development (OECD) that was held in Paris, France, in February 2012. The full costs of the Commission's attendance were met by the International Development Research Centre (IDRC) of Canada. The Forum's two main topics of *Competition and Commodity Price Volatility* and *Improving International Co-operation in Cartel Investigations* were of great relevance to the Commission.

The Commission also continued to actively participate in the work programmes of the African Competition Forum (AFC), an organisation that it is one of the founding fathers. It also participated in the work programmes of the COMESA Competition Commission (CCC) and the SADC Competition and Consumer Law and Policy Committee.

At a bilateral level, the Commission cooperated on exchange of information on competition cases with other competition authorities in the SADC and COMESA regions, particularly the Competition Commission of South Africa, the Namibian Competition Commission (NaCC), the Competition and Consumer Protection Commission (CCPC) of Zambia, and the Fair Competition Commission (FCC) of Tanzania. The Commission also hosted a delegation from the Anti-Monopoly Bureau of the Ministry of Commerce of The People's Republic of China that visited Zimbabwe in June 2012 to exchange views and information on the implementation of competition policy and law.

The Commission's Director carried out an independent review of the competition and consumer protection legislation of Seychelles under an UNCTAD technical assistance project on behalf of the Fair Trading Commission (FTC) of Seychelles.

(e) Competition Workshops and Seminars

The Commission during the 2012 year under review attended and participated at a number of various national, regional and international workshops and seminars on competition policy and law.

Table 21: Competition Workshops and Seminars Attended in 2012

Period	Workshop/ Seminar	Participant(s)
16-17 February	OECD 11 th Global Forum on Competition: Paris, France.	A.J. Kububa
16 February	AFC African Competition Meeting: Paris, France	A.J. Kububa
8-9 March	Second Workshop on Implementation of Regional Competition Regulatory Framework in COMESA: Nairobi, Kenya	A.J. Kububa, B. Chinhengo, and M. Gurure
9-13 July	Twelfth Session of the Inter-Governmental Group of Experts on	D. Sibanda, S.

	Competition Law and Policy: Geneva, Switzerland	Dandira, V. Zifudzi, A.J. Kububa, B. Chinhengo, and M. Gurure
13-14 November	Fifth SADC Regional Training Workshop on Competition and Consumer Law and Policy: Johannesburg, South Africa	L. Jsayaguru, and I. Tausha
14 November	Fourth SADC Meeting of Competition and Consumer Law and Policy Committee: Johannesburg, South Africa	I. Tausha
19 November	UNCTAD Voluntary Peer Review Dissemination Stakeholders Seminar: Harare, Zimbabwe	External and Internal Stakeholders
20 November	UNCTAD Staff Training Workshop on Competition Policy and Law: Harare, Zimbabwe	Members and Staff of the Commission
3-5 December	AFC Workshop on Research Skills for Competition Analysis: Windhoek, Namibia	C. Mashava and C. Dzenga

5.3 Trade Tariffs Operations

The Commission's trade tariffs operations primarily involve giving 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.

5.3.1 Tariffs Cases

The handling of tariffs cases by the Commission is 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)".

The Commission during the 2012 year under review concluded a total of 6 trade tariffs cases, of which four involved tariff relief, one involved unfair trade practices, and one was a sectoral study. The number of cases concluded during the year remained more or less constant with those concluded during the previous 2011 year.

Table 22: Number of Tariffs Cases Concluded Over the Years

Case Category	1999-2001	2002-2004	2005-2007	2008-2010	2011	2012	Total
Tariff Relief	37	44	12	17	4	4	118
Unfair Trade Practices	0	0	0	4	2	1	7
Sectoral Studies	6	8	0	0	0	1	15
Totals	43	52	12	21	6	6	140

The tariffs case activity during the year was however relatively heavy, with over 13 cases actually handled, of which 7 were carried forward to the 2013 year.

Table 23: Tariffs Case Activity in 2012

Case Category	No. of Cases Brought Forward From 2011	No. of Cases Received In 2012	No. of Cases Concluded In 2012	No. of Cases Carried Forward to 2013
Tariff Relief Applications	2	3	4	1
Unfair Trade Practices	1	2	1	2
Sectoral Studies	4	0	1	3

Table 24: Tariffs Cases Carried Forward to 2013

Tariff Relief Applications	Unfair Trade Practices	Sectoral Studies
Application for Duty Reduction by Nestle Zimbabwe (Pvt) Limited.	1. Request for Countervailing Duty by Anchor Yeast (Pvt) Limited. 2. Request for Countervailing Duty by Kind Brands (Pvt) Limited.	1. Study into the Poultry Industry. 2. Study into the Motor Vehicles Sector. 3. Study into the Fertilizer Industry.

The food processing industry was given the most trade tariffs assistance and attention during the year under review. Not less than 7 other industries and sectors were assisted or were given attention.

Table 24: Sectoral Trade Tariffs Engagements in 2012

Sector	No. of Engagements			
	<i>Tariff Relief</i>	<i>Unfair Trade Practices</i>	<i>Studies</i>	<i>Total</i>
Food Processing Industry	3	1	1	5
Plastics Industry	1	0	0	1
Wire Manufacturing Industry	1	0	0	1
Agricultural Implements Manufacturing Industry	1	0	0	1
Packaging Industry	1	0	0	1
Clothing & Textiles Industry	0	0	1	1
Fertilizer Industry	0	0	1	1
Motor Industry	0	0	1	1
Totals	7	1	4	12

(a) Tariff Relief Applications

The Commission's Tariffs Division investigated a total of 5 tariff relief cases during the 2012 year under review, of which 4 were made recommendations on. The most common tariff relief applications were for import duty reduction on raw materials and tariff protection on finished local products. Requests for duty reduction on raw materials were more favourably considered by the Commission than those for tariff protection. Tariff protection is generally found to be inconsistent

with trade liberalisation obligations under the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC), and is only favourably considered in exceptional cases involving the viability, and imminent closure, of the applicant company. It also negates import competition, which encourages enterprise efficiency.

Tariff relief applications are considered by the Commission in three basic steps, as follows:

- **Step 1:** Tariff relief request submission or identification;
- **Step 2:** Internal investigation and assessment in the Commission;
- **Step 3:** Recommendations to the relevant Government authorities.

Step 1 Tariff Relief Request Submission	Step 2 Tariff Relief Request Investigation	Step 3 Tariff Relief Request Recommendation
Tariff relief requests (for duty reduction or suspension, tariff splits, import protection, etc.) are submitted to the Commission by the affected companies or industries. The submissions must contain all the relevant information to enable the Commission to undertake the necessary investigations. The information required includes a description of the relevant products and their tariff codes, import sources and quantities, and justification of the relief sought.	Tariff relief requests are investigated by the Tariffs Division of the Commission's Directorate. The investigations includes stakeholder consultations and economic analyses. Factory visits are an essential part of the stakeholder consultations made.	The reports on the Tariff Division's investigations are submitted to the Commission's Tariffs Division for consideration, which in turn makes appropriate recommendations to the full Board of Commissioners. The Commission then submits its recommendations to the Ministry of Industry and Commerce, which also consults the Ministry of Finance before a final decision is made on the tariff relief request.

During the year under review, the Commission received and considered applications for various forms of tariff relief. Most of the applications were for duty reduction (4 requests), with some for tariff protection (2 requests) and duty reinstatement (1 request).

Graph 3: Tariff Relief Requests Considered in 2012

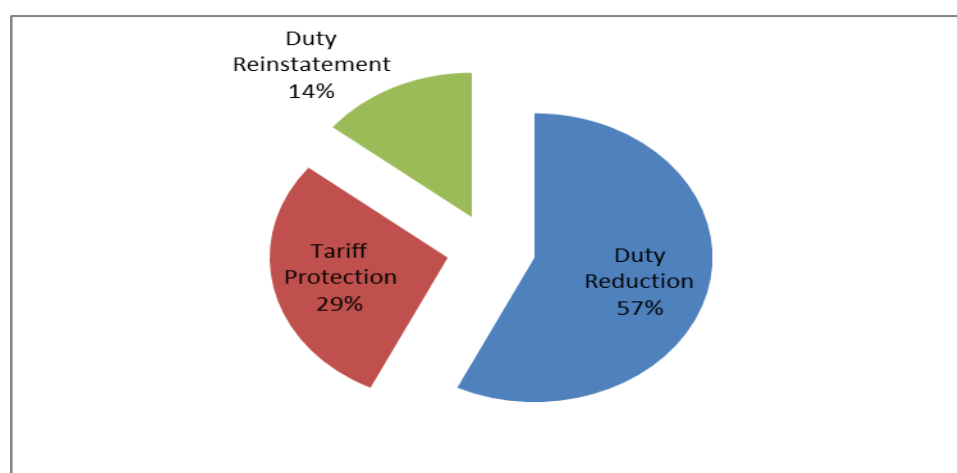


Table 25: Tariff Relief Recommendations in 2012

Applicant	Relief Sought	Commission Recommendations																				
1. Crystal Candy (Pvt) Limited	Duty Reduction	The Commission in April 2012 agreed to recommend to the relevant Government authorities the rejection of the application for import duty reduction on industrial hydrogenated palm fat from 15% to 0% since that would affect the local Olivine Industries’ output of bakers’ fats. It was however agreed to recommend the re-alignment of the duty for hydrogented palm fats, Tariff Code 151.2010, to the COMESA Common External Tariff (CET), which is 10%.																				
2. Universal Bags (Pvt) Limited	Duty Reduction	The Commission in November 2012 agreed to recommend to the relevant government authorities the following import duty reductions on raw materials used by Universal Bags in the production of luggageeware: <table><tr><th>Tariff Code</th><th>Raw Material</th><th>MFN Duty</th><th>Recommended Duty</th></tr><tr><td>3921.1100</td><td>Cellulot strips of polymer</td><td>15%</td><td>10%</td></tr><tr><td>7318.2300</td><td>Metal rivets</td><td>15%</td><td>10%</td></tr><tr><td>7326.1900</td><td>Steel frames</td><td>20%</td><td>10%</td></tr><tr><td>9607.1900</td><td>Slider fasteners</td><td>20%</td><td>1%</td></tr></table> It was noted that the applicant company is the one of the largest luggageeware manufacturers in Zimbabwe. It however was operating at 50% capacity, and one of the problems it was facing was stiff competition from cheap luggageeware imported into the country from the Far East, landing in the country at half the price of local products.	Tariff Code	Raw Material	MFN Duty	Recommended Duty	3921.1100	Cellulot strips of polymer	15%	10%	7318.2300	Metal rivets	15%	10%	7326.1900	Steel frames	20%	10%	9607.1900	Slider fasteners	20%	1%
Tariff Code	Raw Material	MFN Duty	Recommended Duty																			
3921.1100	Cellulot strips of polymer	15%	10%																			
7318.2300	Metal rivets	15%	10%																			
7326.1900	Steel frames	20%	10%																			
9607.1900	Slider fasteners	20%	1%																			
3. Zimplow (Pvt) Limited	Duty Reinstatement and Tariff Protection	The Commission in November 2012 agreed to recommend to the relevant government authorities that the then import duty levels on the following finished agricultural implements were adequate to provide the necessary protection on Zimplow’s local production: <table><tr><th>Tariff Code</th><th>Product Description</th><th>Current Duty</th></tr><tr><td>8432.1010</td><td>Single furrow mouldboard ploughs of a weight not exceeding 55kg.</td><td>40%</td></tr><tr><td>8432.1092</td><td>Mouldboard ploughs of a weight not less than 55kg.</td><td>10%</td></tr><tr><td>8432.3000</td><td>Seeders, planters and transplanters</td><td>5%</td></tr></table> It was noted that imports of seeders, planters and transplanters under Tariff Code 8432.3000 should remain at 5% duty as the local industry does not have the capacity to produce sufficient quantities. With regards to raw materials used in the manufacture of the implements, it was agreed to recommend the following	Tariff Code	Product Description	Current Duty	8432.1010	Single furrow mouldboard ploughs of a weight not exceeding 55kg.	40%	8432.1092	Mouldboard ploughs of a weight not less than 55kg.	10%	8432.3000	Seeders, planters and transplanters	5%								
Tariff Code	Product Description	Current Duty																				
8432.1010	Single furrow mouldboard ploughs of a weight not exceeding 55kg.	40%																				
8432.1092	Mouldboard ploughs of a weight not less than 55kg.	10%																				
8432.3000	Seeders, planters and transplanters	5%																				

		duties:				
		Tariff Code	Product Description	MFN Duty	Requested Duty	Recomr Duty
		7217.1000	Wire of iron or non-alloy steel: not plated or coated, whether or not polished.	20%	5%	10%
		7217.9000	Other wire of iron or non-alloy steel.	20%	5%	10%
		7214.9100	Bars and rods of iron or non-iron alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling: of a rectangular (other than square) cross-section.	10%	5%	10%
		7215.9000	Other bars and rods of iron or non-alloy steel.	10%	5%	10%
		7214.9000	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling: not of rectangular cross-section.	10%	5%	10%
		It was noted that the applicant company is the largest animal drawn agricultural implements manufacturer in Sub-Saharan Africa but was operating at 55% of its capacity. Steel, largely imported, was the major raw material in the manufacturing processes and contributed about 20% of the total manufacturing costs.				
4. Proplastics (Pvt) Limited	Tariff Protection and Duty Reduction	The Commission recommended to the relevant Government authorities rejection of the application for tariff protection against imported plastic tubes and pipes (falling under Tariff Codes: 3917.2110; 3917.2200; 3917.2310; 3917.3210; 3917.3130; 3917.3190; 3917.3310; and 3917.3910) since protection would foster inefficiencies. It was also noted that the company's export volumes had been growing over the years. It was however agreed to recommend reduction of import duty from 5% to 0% on plastic raw materials (polyvinyl chloride) falling under Tariff Codes 3904.1000 and 3904.2200.				

(b) Unfair Trade Practices

Investigations into unfair trade practices (dumping and subsidisation) under the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002 are protracted. They are not only based on information given by the complainants in detailed dumping forms but also on extensive stakeholder consultations and inspection visits to the countries of origin of the alleged dumped products. It is not unusual that some such investigations take years to complete.

The Commission has still not carried out a full investigation into an unfair trade practice, with many dumping allegations referred to it for investigation not technically involving dumping as defined in the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations. 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

The Tariffs Division during the year under review undertook four sectoral studies, into the blankets industry, the poultry industry, the fertilizer industry, and the motor vehicles assemble industry.

The study into the blanket industry was completed during the year, and the report circulated to all the interested stakeholders, including the Ministry of Industry and Commerce. The objectives of the study were to: determine factors impacting on the performance and competitiveness of the industry, and identify tariff changes aimed at improving the industry's performance. The study identified the variables that affect the industry's performance as: (i) rigid labour legislation; (ii) smuggling and import duty circumvention at points of entry; (iii) electricity power supplies and railways services; (iv) availability of credit lines and short-term working capital; and (v) the level of import duties on raw materials.

Box 5: Summary of Report on Study on Blankets Industry

In the past decade, the blanket industry came under siege from an influx of cheap blankets imported world over. This culminated in its contraction with concomitant job losses as industry struggled to cope with the intense import competition. Manufacturers called for Government intervention to save the ailing sector through levying protective duties on finished imported blankets concurrently reducing duties on imported raw materials and intermediate goods applied in the production process. Against this background, the Commission undertook a study in 2010 in the sub-sector whose objectives were to i) determine factors impacting on the performance and competitiveness of the industry, and ii) identify tariff changes aimed at improving the performance of the industry.

In its analysis, the study used time series data for the period 2000 to 2009. Desk research was used to review literature undertaken by other researchers. Primary data was gathered from factory visits, interviews as well as other stakeholders such as ZIMRA for duty levels and ZIMSTATS for trade data. Secondary data was obtained from websites of other countries in the region competing with the local industry particularly SACU duty rates. The major constraint encountered was the availability of data. Firms in the industry were reluctant to divulge specific information pertaining to their cost structures for fear of disclosing confidential information to other players.

The industry has three well established blanket manufacturers namely i)National Blankets(Pvt)Ltd; ii)Waverly Blankets(Pvt)Ltd; and iii)Travan Blankets(Pvt)Ltd. Small Chinese companies, mostly involved in assembling blanket parts imported from China recently sprouted up but their output remains insignificant. The study

therefore focused on the three major players.

The major input is acrylic fibre, a by-product of the petroleum fractional distillation process and is imported from Asia and Europe dutiable at 5%. Capacity utilization levels average 8% as a result of import competition and operational challenges. Technology wise, local companies are not that far behind with two out of the three companies having recently undertaken major investments in modern equipment whilst one company lags behind saddled with equipment more than 30 years old. Local players produce four main types of blankets namely the i) 2-in-1 range, ii) premium range, iii) middle range and iv) relief /bottom range to cater for different consumer tastes within the market. The industry has tended to be reactive rather than proactive in terms of creating new products and therefore its product range has remained static over time. Imported blankets constitute 70% of the domestic market share and local companies have a 30% market share. The industry exports finished blankets in the region targeting Namibia, South Africa, Mozambique and Zambia.

The study established that variables that hinder the industry's competitiveness at the macro- and micro-levels include i) rigid labour legislation, ii) smuggling and duty circumvention at the points of entry, iii) the technology and quality link, iv) power supplies and rail services, v) availability of lines of credit and short term working capital, vi) liberal duty rebate system vii) directed government support, viii) policy consistency and ix) levels of duty on inputs.

It also established that tariffs do influence the competitiveness of a raw material import dependent industry. Local blanket manufacturers benefit from higher levels of protection of 40% + US\$1.50/kg on the finished product compared to a regional average rate of 30%. However, they face higher import duties on raw materials than their regional counterparts. Elimination of duties on raw materials will reduce the cost of producing a blanket locally by 1.74% or by \$0.28 which would be significant if all other factors that impact on production costs are addressed. Accordingly, the study recommended the reduction of duties on raw materials and addressing factors that impinge on its competitiveness to enhance the sector's performance.

While the research was not exhaustive, it is hoped that once this study is circulated to all stakeholders, it will stimulate debate and further research into areas that were not covered particularly but not limited to the specific nature of assistance that can be rendered to the industry.

4.3.2 Technical Work On Trade Policy Issues

(a) Trade Negotiations

During the year under review, the Commission's Tariffs Division attended and participated at more than 20 preparatory meetings on trade negotiations, most of which were held at the Ministry of Industry and Commerce. The meetings were in preparation for Zimbabwe's positions at forthcoming regional trade negotiations under the auspices of the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC), notably preparatory meetings for the 28th COMESA Trade and Customs Committee, the Extraordinary COMESA Council of Ministers and Senior Officials, the 16th COMESA Heads of State and Government Summit and Policy Organs Meetings, the 45th Meeting of the SADC Trade Negotiating Forum and the 5th Industrial Development Forum, and the SADC Summit.

A total of 11 actual trade negotiations meetings were attended during the year. The Commission could not attend three trade negotiations meetings because of resource constraints. The meetings were two Tripartite Trade Negotiating Fora (TTNF) held in June and December 2012, and the 45th Meeting of the SADC Trade Negotiating Forum, held in Gaborone, Botswana, during the period 22-24 October 2012.

Table 26: Trade Negotiations Meetings Attended in 2012

Regional Grouping	Meeting	Major Outcomes
Common Market for Eastern and Southern Africa (COMESA)	1. COMESA Trade and Customs Committee, and Extraordinary Meeting of Council, held in Lusaka, Zambia, during the period 13-16 April 2012,	Considered the status of implementation of the Customs Union (CU), and made decisions on the entry into force of the CU at the end of the transition period in June 2012.
	2. COMESA Trade and Customs Committee, held in Lusaka, Zambia, during the period 18-20 July 2012.	Considered preparations for the launch of the CU.
	3. COMESA Council of Ministers Meeting, held in Lusaka, Zambia, during the period 4-5 October 2012,	Considered the status of the implementation of the interim provisions of the CU, and preparations for the launch of the CU, and made appropriate recommendations to the Policy Organs.
	4. 16 th COMESA Heads of State and Government Summit, and Policy Organs Meetings, held in Kampala, Uganda, during the period 13-24 November 2012.	COMESA had put in abeyance the operationalization of its CU, which had been slotted for June 2012 as member States had not implemented a number of the key fundamentals which underpinned the creation of a customs union. The new date for the operationalization of the CU was 2015. Under the Economic Partnership Agreement (EPA), a number of issues remained outstanding, and there was stalemate due to the following: (i) absence of binding commitment on development, particularly the provision of additional resources; (ii) the insistence the European Union (EU) for EPA countries to disclose how much and when to liberalise their trade; (iii) limitations on cumulation, especially for Chapters 1-24 with other countries that the EU has Free Trade Agreements (FTAs); and (iv) issues of special safeguards for agriculture to address effects of EU export subsidies which remained unresolved.
Southern African Development Community (SADC)	1. SADC Trade Meetings held in Gaborone, Botswana, during the period 11-20 June 2012: (i) Sub-Committee on Customs Cooperation (11-13 June); (ii) Sub-Committee on Trade Facilitation (14-15 June); (iii) 44 th Trade Monitoring Forum (15-17 June); (iv) Customs Union High Level Expert Group (18 June); and (v) 4 th International Development Forum (19-20 June).	Deliberations on: (i) trade liberalisation; (ii) trade facilitation and cooperation; and (iii) the industrial development pillar.

	2. SADC/EPA Regional Stakeholder Consultations on the proposed trade related facility, held in Gaborone, Botswana, during the period 6-7 September 2012.	The conceptual design of the Enhanced Trade Related Facility (TRF) was presented to member States, and member States were provided with the opportunity to discuss the conceptual aspects and to provide views on improving the TRF.
	3. 45 th Meeting of SADC Trade Negotiating Forum, and 5 th Industrial Development Forum, held in Gaborone, Botswana, during the period 22-24 October 2012.	- Reviewed the 2012 Audit of the implementation of the SADC Protocol on Trade; - Trade liberalisation: Malawi's tariff offer, and report back on Zimbabwe's Category A and B tariff phase down; - Elimination of non-tariff barriers to trade; - Reviewed of SADC Rules of Origin (RoO); - Proposed Protocol on Trade Monitoring and Compliance Mechanism.
	4. SADC Committee of Ministers of Trade, and the Ministerial Task Force on Regional Economic Integration Meetings, held in Maputo, Mozambique, during the period 26-30 November 2012.	- Considered the outcomes of the 2012 Audit study on the implementation of the SADC Trade Protocol; - Adopted the draft SADC Industrial Development Policy Framework; - Considered the proposed timelines for the establishment of the SADC Customs Union.
	5. SADC/EPA Stakeholder Consultations, held in Gaborone, Botswana, during the period 6-7 November 2012	Consulted on the proposed trade related facility.
Common Market for Eastern and Southern Africa/ East African Community/ Southern African Development Community.	1. Third Tripartite Trade Negotiating Forum (TTNF), held in Lusaka, Zambia, during the period 12-14 March 2012.	- Took stock of the preparations for negotiating the Tripartite Free Trade Area (TFTA), including exchange of tariff and trade information and data and trade instruments; - Adopted the negotiating principles; - Updated member States on information relating to tariffs, volumes and direction of trade; - Established Technical Working Groups.
	2. Fourth COMESA-EAC-SADC Tripartite Trade Negotiating Forum, held Arusha, Tanzania, during the period 5-7 September 2012.	- Drafted modalities for negotiations on trade liberalisation; - Status of information exchange among countries; - Considered reports of the Technical Working Groups on technical barriers to trade, sanitary and phyto-sanitary measures, and non-tariff barriers to trade.

(b) Analytical Papers

The Tariffs Division of the Commission produced three important analytical papers for governmental policy formulation during the year under review. The first paper was produced in April 2012 on the verification of the Tripartite tariffs, and the second paper, produced in July 2012, and was the Commission's contribution to the 2012 National Budget. The third paper was produced in September 2012, and was on the application for further derogation on Category C Products under SADC.

Table 27: Analytical Papers Produced in 2012

Analytical Paper	Issues Analysed
Verification of the Tripartite Tariffs	An exercise was undertaken to ensure that what had been submitted to the Secretariat of the COMESA-EAC-SADC Tripartite Free Trade Area (TFTA) was what was obtaining in Zimbabwe for the purposes of information exchange.
Contribution to the 2012 National Budget	Recommendations on a number of trade tariffs issues, including the following: • Upward review of import duties on motor vehicles to 30%; • Imposition of a 25% surtax on years (Tariff Code 2102.1000) to counter the anti-dumping effects from South Africa; • Downward review of import duties on raw materials for the shoe, packaging, food & beverages, and luggage-ware sectors; • Undertaking of a General Tariff Review; • Addressing anomalies of World Trade Organisation (WTO) bound tariffs, and duties that exceed bound tariff levels under the WTO.
Further Derogation on Category C Products under SADC	Zimbabwe had not complied with its tariff phase-down programme under SADC by 2008. Factors that impacted on the performance of industry were analysed, and recommendations made on the way forward with regards the tariff phase-down. The following were the options identified: (i) implementation of the Category C tariff phase-down; (ii) selective tariff phase-down and deferring implementation tariff phase-down.

(c) Consultative and Advisory Meetings

The Tariffs Division held a number of consultative and advisory meetings with various companies during the year under year, during which it gave advice on trade tariffs issues and assessed the competitiveness of the companies in terms of import requirements. Most of the meetings were held as part of factory visits to the companies, with some of them related to on-going tariff relief investigations and to the undertaking of sectoral studies. Over 10 companies and industries were met throughout the year in that regard.

Table 28: Companies and Industries Met on Trade Tariffs Issues During 2012

Month	Company/ Industry	Location	Major Issues Discussed
February	Raybag (Pvt) Limited	Harare	The objective of the visit to the company were to enlighten the Commission on the stages and processes of manufacturing luggage-ware, imported raw materials, and

			challenges faced by the company. The main challenges faced by the company were: (i) lack of working capital; (ii) import competition; (iii) high utility charges; and (iv) high import duties on raw materials.
	Anchor Yeast (Pvt) Limited	Gweru	The main objectives of the meeting were for Anchor Yeast (Pvt) Limited, the sole manufacturer of yeast in Zimbabwe, to present its request for tariff relief to the Commission, and to seek advice and guidance on the way forward to resolve some of its challenges. The following were the company's concerns: (i) regional competition on yeast emanating from Zambia and South Africa; (ii) alleged dumping of yeast on the Zimbabwean market, mainly from South Africa; (iii) alleged excessive pricing of molasses by the sole producer of the product in Zimbabwe; and (iv) import duties on some raw materials from South Africa. The company was advised that duties levied under SADC and COMESA are a result of the country's commitments under these regional trading arrangements and are binding. However, the Commission could ensure that the Anchor Yeast imports are levied appropriate duties at the time of importation. The Commission would also verify whether yeast is supposed to be zero rated under COMESA and SADC and advise the company accordingly. It was noted that there was a <i>prima facie</i> case of dumping of yeast on the Zimbabwean market. The company was accordingly advised to complete and submit the relevant anti-dumping application forms to the Commission. It was also noted that possibly the sole supplier of molasses in Zimbabwe was abusing its monopoly position through excessively pricing of the product. The matter was therefore referred to the Commission's Competition Division for investigation. Regarding high import duties on raw materials, the company was advised that the Commission could assist in the reduction of the duties so as to make locally produced yeast competitive against imports. In that regard, Anchor Yeast was requested to provide a list of its raw materials in the production of yeast, together with the tariff codes and sources of those raw materials.
March	Shriji (Pvt) Limited	Harare	The main objectives of the visit to the company, which is a manufacturer of luggage ware, were to enlighten the Commission on the stages and processes of manufacturing bags, products and raw materials imported by the company, the use of those products in making bags and challenges faced by the company. The company was operating at 19% capacity utilisation, and the main challenges that it was facing were: (i) import

			competition; (ii) lack of working capital; (iii) high utility charges; and (iv) high import duties on raw materials.
May	Lyons Zimbabwe (Pvt) Limited	Harare	The company manufactures and markets nutritious food and beverage brands for the Zimbabwean market as well as for the export markets. It sources most of its raw materials locally where it is available with the exception of sleeve labelling materials for its beverages, which are sourced in Asia and Europe. The major challenge faced by the company was shortage of electricity. Due to the electricity challenges, the company was mostly running on the more expensive diesel generators.
	Motor Industry	Harare	The motor industry was represented at the meeting by Willowvale Mazda Motor Industries (Pvt) Limited, Quest Motor Coporation Limited, and Deven Engineering. The industry stated that over the last decade it had lost its dominance in supplying the local market with its automotive requirements due to both the economic downturn and the 'unfair' competition from South Africa. The total motor vehicles market was increasing rapidly but was mostly benefitting the importers of Completely Built Up (CBU) units. The industry's loss of market share had led to the following challenges: (i) low re-capitalisation levels to meet the increasing technological requirements of the industry; (ii) job losses from a peak of ~ 20 000 (industry total of both upstream and downstream) to less than 2 000; (iii) reduced capacity utilisation from 100% in 1998 to the current 10 – 15%; (iv) consequent reduction in product range, thereby limiting customer choice; (v) reduced profitability due to very low (or nil) margins to try to be competitive; (vi) increased local and foreign borrowings to sustain an order pipeline of Completely Knocked Down (CKD) kits against low sales off-take; (v) increased cost of borrowings at very short tenures, while CBU importers are able to keep huge consignment stock that is well funded by their South African principals; and (vi) lack of affordable customer funding to buy the motor vehicles. The industry proposed that in order to rescue the sector from definite collapse, the following measures must be taken forthwith: (i) imposition of protective import duties on completed motor vehicles; and (ii) importation of only CKD motor vehicles. It was felt that the above measures would be in accordance with the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002 (Statutory Instrument 266 of 2002). The industry was advised to complete and submit the relevant anti-dumping duty application forms in line with the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002.

	Alarm Supplies (Pvt) Limited		The company the Commission's advice on tariff reclassification of goods, and was referred to Zimbabwe Revenue Authority (ZIMRA) which handles such issues.
June	Bata Shoe Company	Gweru	The main objectives of the tour was to enlighten the Commission on the stages and processes of manufacturing shoes, the products and raw materials imported by the company, the application of those products in shoe making, and the challenges faced by the company in its operations. The company was operating at 60% capacity utilization, but was also importing semi-finished shoes and other types of shoes not viable to produce locally so as to meet customer tastes. It was exporting its products to South Africa, Mozambique, Malawi and Zambia. The company was faced with a number of challenges, including: (i) lack of long-term capital; (ii) high interest rates; (i) low market demand due to import competition; (iv) erratic power supply; (v) high utility charges; and (vi) shortage and high cost of raw hides (for leather shoe production).
	Anchor Yeast (Pvt) Limited	Gweru	The company was re-visited for further assessment of its trade tariffs competitive position.
July	Natpak (Pvt) Limited	Harare	The company, which manufactures plastic woven polypropylene bags, sought the Commission's advice on classification of tariff line 6305.3300, and on SADC tariffs. It was advised on the obtaining duties for specific tariff lines under SADC, and to approach ZIMRA with regards to changes in classification.
September	United Refineries (Pvt) Limited	Bulawayo	The company produces cooking oil, stockfeeds, protein, and laundry soaps. It used to manufacture oil-based cosmetics products, candles, stockfeed proteins, vegetable-based cooking oil, bath and laundry soaps, and glycerine. It was found that if assisted through addressing problems that impeded investment inflows, the company has enormous potential of: (i) exporting; (ii) manufacturing the full range of products it used to produce; and (iii) expanding and employing a large number of people. The main challenges faced by the company were lack of liquidity to recapitalize and import competition.
	Lobels Biscuits (Pvt) Limited	Bulawayo	The company was visited to gather the necessary information to advise Government on the proposed controversial 20% import duty on flour. The company manufactures 40 and 15 brands of biscuits and sweets respectively, and sources most of its raw materials from South Africa. Flour is one of those raw

			materials, which was attracting an import duty of 5%. Prior to the economic melt down, the company used to export 90% of its output largely into the SADC region but was currently exporting 10% of its production to South Africa, Botswana, Zambia, Angola, Namibia and Malawi. Lobels brand biscuits used to control 75% of the local market in the 1990s decreasing to 3% by 2009 with the gap being covered by other players and imports. To date, the company supplies approximately 50% of the local market. Challenges faced by the company included: (i) external competition; (ii) duty on imported raw materials; (iii) financial constraints; and (iv) input supply constraints. The company was against the proposed 20% duty on flour citing that it would be protecting a monopoly and an inefficient firm. The proposed Government in-quota tariff rate was a noble idea to try and restore the industrial linkages and value chains that used to exist. However, for the strategy to yield the intended results there should be an improvement in the efficiency of companies in the flour value chain. Supply bottlenecks which negatively affected other industries should also be eliminated, and imports should augument not replace local flour supplies.
	Arenel (Pvt) Limited	Bulawayo	The company was also visited in connection with the proposed controversial 20% import duty on flour. The company produces 42 and 23 brands of biscuits and sweets respectively, and sources most of its raw materials from South Africa and the world over. Flour is one of its major inputs, currently being charged 5% import duty. It was currently exporting to South Africa, Botswana, and Zambia, and intended to re-open its market in Tanzania. Challenges faced by the company included: (i) external competition; (ii) duty on imported raw materials; (iii) financial constraints; and (iv) input supply constraints. The company was also against the proposed 20% duty on flour for more or less the same reasons given by Lobels Biscuits above.
October	Crowstick Services (Pvt) Limited		The company sought tariff relief in the form of reintroduction of import duty on diapers (Tariff Code 9619.0022). The HS2012 classified diapers under Code 9619.0022, from 4818.4020 not provided for under the SADC tariff programme. Under Code 9619.0022 diapers were now attracting 5% import duty instead of being zero rated. The company was referred to ZIMRA fo rationalisation since that Authority deals with issues of classification.
November	Mowpower (Pvt)		The company was now the sole manufacturer of

	Limited		lawnmowers in the country following the closure of other companies in the industry. Its products include commercial and domestic as well as electric and petrol lawn mowers. It imports motors and other parts from South Africa and assembles the lawn mowers locally. Its major competitors are <i>Rolex</i> and <i>Tandem</i> from South Africa. It alleged unfair competition from importers of lawn mowers due to the abuse of the Rules of Origin Certificate. The company was advised to approach ZIMRA with regards to the Rules of Origin issue as this mandate falls under its purview.
December	Kind Brands (Pvt) Limited	Harare	The main objectives of the visit to the company, which manufactures shoe polish, were to enlighten the Commission on the stages and processes of making shoe polish, products that the company imports, the use of those products in making shoe polish, and challenges faced by the company. The company had alleged that shoe polish from South Africa was being dumped on the Zimbabwean market. There was also need to determine measures that could be taken to enhance the company's competitiveness. The company was operating at 36% capacity. It was using machinery which was 10 years old, and therefore outdated in terms of automation. It however had plans to update the machinery by automating the production processes which would make it more competitive. The company was faced with the following challenges: (i) unfair competition from South African shoe polish, thus the allegations that shoe polish imports from South Africa are being dumped in Zimbabwe thereby negatively affecting the local shoe polish market share and its viability; (ii) erratic power supply as it affected production and productivity; and (iii) liquidity constraints and high cost of capital.
	Carnaud Metal Box (Pvt) Limited	Harare	The objectives of the tour were to enlighten the Commission on the stages and processes of manufacturing of the company's products (metal and plastic packaging), imported and locally available inputs, and challenges faced by the company. The company was facing the following challenges: (i) import competition of canned products which had reduced demand for the company's products; (ii) local company closures such as Reckitt and Benkniser, which had significantly reduced the company's customer base for metal and plastic containers; (iii) duty on tinplate which has an effect of increasing the company's costs of production; (iv) high costs of labour; (v) skills flight to both the region and abroad; and (vi) erratic power supply affecting production and productivity.

The company meetings and visits undertaken by the Tariffs Division during the year under review assisted the Commission in not only making sound and well-researched recommendations to the relevant Government authorities on tariff relief requests, but also in positively contributing to major trade policy formulation processes and the National Budget.

(d) Trade Tariffs Advocacy and Networking

The Commission continued to maintain and nurture strong working relationships and linkages with the relevant Government Ministries and Departments that deal with trade policy, regional integration, and investment matters, notably the parent Ministry of Industry and Commerce, the Ministry of Finance, the Ministry of Regional Integration and International Co-operation, the Ministry of Economic Planning and Investment Promotion, and the Zimbabwe Revenue Authority (ZIMRA). As a result, the Commission's development role was recognised in the Government's major socio-economic development policies, such as the Industrial Development Policy (2012-2016) and the National Trade Policy (2012-2016).

Close working relations with industry and commerce continued to be built through the Confederation of Zimbabwe Industries (CZI), and the Zimbabwe National Chamber of Commerce (ZNCC). In that regard, the Annual Congresses of the ZNCC and the CZI that were held in June 2012 in Nyanga and in July 2012 at the Victoria Falls respectively were attended. The Commission's Tariffs Division also actively participated at least 7 meetings of the CZI's Economics and Banking Standing Committee, and 3 meetings of that business association's Trade Development and Investment Promotion Standing Committee, during the year, where major economic and trade issues were discussed.

Table 29: Major Issues Discussed at CZI Standing Committees Participated by the Commission

Economics and Banking Standing Committee	Trade Development and Investment Promotion Standing Committee
- Current account deficit - Economic updates - Sector updates - Currency options for Zimbabwe - Cost-benefit analysis of the motor industry - National Budget contributions	- Gas regulations - Trade updates (COMESA Customs Union, SADC, Tripartite Arrangement, etc.)

(d) Seminars and Workshops Attended

The Tariffs Division of the Commission attended and participated at not less 10 seminars and workshops during the year under review at which important trade issues were discussed. The workshops also capacitated staff of the Division in their work.

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

Dates	Event	Participant(s)	Purpose of Workshop
20-22 February	SADC TIFI Regional Workshop on Trade Remedies, Johannesburg, South Africa.	C. Chipanga	To discuss part of the Trade Protocol provisions relating to trade remedies, and to make proposals on how such provisions could be clarified to facilitate their application, as well as investigate

			whether the adoption of the World Trade Organisation (WTO) framework is appropriate enough for the implementation of the SADC Free Trade Area (FTA).
27-29 March	Workshop on Enhancing the Participation of SADC Member States in Regional and Multilateral Trade Negotiations, Johannesburg, South Africa.	T. Katsande	To enhance the effective participation of SADC at regional and multilateral trade negotiations meetings.
3 May	SADC Secretariat Workshop on 2012 Audit/Review of Implementation of SADC Trade Protocol, Harare.	E. Ruparanganda, C. Chipanga, C. Phiri, and T. Katsande	To review the implementation of the SADC Trade Protocol report by the Southern Africa Trade Hub focusing on the tariff phase down.
9-11 May	COMESA Workshop on Improving the Doing Business Environment in Zimbabwe, Harare.	E. Ruparanganda	To improve the doing business environment in Zimbabwe, and the ease of doing business in Zimbabwe.
10-11 May	ZIMTRADE Workshop on the Tripartite Arrangement.	C. Chipanga, and T. Katsande	To train participants on the Tripartite trade agreement, and review of the TFTA agreement status.
28-30 May	Workshop on Domestication Survey COMESA Programmes in Zimbabwe.	C. Chipanga	To mainstream regional integration and cooperation commitments at national levels at the legal and regulatory framework level, strategic level, planning level and operational implementation level.
4-5 September	SADC Regional Consultations on Proposed Trade Related Facility, Gaborone, Botswana.		To review the consultant's draft Trade Related Facility financing instrument to be funded by the European Union (EU).
26-27 September	SADC Regional Workshop on Enhancing Conceptual Operational Design Features of the SADC Trade Related Facility.	C. Phiri	To add clarity to the operational design elements of the Trade Related Facility covering issues related to eligibility criteria, eligible activities for support, disbursement procedures to finalise the design.
11 October	Workshop on Trade and Transport Facilitation Assessment, Harare.	T. Katsande	To consider the finalisation of the report produced by the consultant.
29 October – 1 November	National Workshop on Trade Policy Review, Harare.	C. Chipanga, and T. Katsande	To follow up on issues highlighted during the Trade Policy Review (TPR), and to disseminate the results of the TPR to all

			relevant stakeholders to facilitate the implementation and follow-up on issues identified during the TPR.
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(e) Other Related Activities

The Tariffs Division was a member to a number of sub-committees with important trade policy mandates, notably the University of Zimbabwe's Sub-Committee on the establishment of a WTO Reference Centre, establishment of a WTO Training Course Centre, and introduction of a Master's Degree in trade policy. At the Sub-Committee's inaugural meeting held on 30th November 2012, the purpose of the Sub-Committee was advised as to: (i) assess the needs for the private sector in terms of WTO information needs; (ii) discuss the possible curriculum for the development of Master's degree in Trade Policy; and (iii) discuss the suitability of the University of Zimbabwe as a reference regional training centre.

The other sub-committee was the Zimbabwe Revenue Authority (ZIMRA)'s Sub-Committee on Proposed Tripartite Rules of Origin. At the Sub-Committee's inaugural meeting held on 20th September 2013, the draft terms of Rules of Origin under the Tripartite were reviewed with a view to crafting Zimbabwe's input into the Tripartite process. At its meeting held on 2nd October 2012, Annex 4 on the Rules of Origin was considered, and the country's position was adopted.

The Division also produced a total of 7 articles on various trade tariffs and trade policy issues, some of which were published in the national newspapers for the information of the business community and the general public. Financial constraints prevented the publishing of all the articles produced.

Table 30: Trade-Related Articles Produced in 2012

Month	Title of Article	Contents	Publication Status
January	<i>SADC Derogation: Implications for the Zimbabwean Private Sector</i>	The article explained the derogation granted to Zimbabwe under the SADC Trade Protocol, and the possible implications on the local industry.	Not Published
June	<i>Basic Conditions to Institute Anti-Dumping Investigations</i>	The article elaborated on the preconditions for undertaking anti-dumping investigations.	Not Published
July	<i>Why Do Firms Dump?</i>	The article dealt with the rationale behind firms dumping products on other markets, including abuse of monopoly power, exploitation of home country power, predatory pricing, and disposal of surpluses.	Published
July	<i>Objectives of Understanding Anti-Dumping Investigations</i>	The article dealt with the factors that underpin dumping cases, namely the need for: (i) evidence on dumping; (ii) material injury to the domestic industry; and (iii) causal link between the dumped imports and injury to the domestic industry.	Published
September	<i>Safeguards</i>	The article explained the basics of safeguards.	Published

October	<i>The COMESA-EAC-SADC Tripartite Free Trade Area</i>	The article gave an overview of the costs and benefits of the Tripartite Free Trade Area (TFTA)	Published
December	<i>The Motivations for Regional Trade Arrangements</i>	The article explored the rationale behind countries entering into regional trade agreements and arrangements.	Not Published

5.4 Legal and Corporate Services

The Legal and Corporate Services Division is central to the Commission's operations. It 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. It therefore plays the crucial role of linking the Directorate's investigative functions with the Board of Commissioners' adjudicative functions. The Division's operational mandate also includes: (i) the provision of secretarial services to the Board of Commissioners; (ii) the enforcement of Commission's orders, determinations and other resolutions; and (iii) corporate governance and public relations.

The Division is headed by the Commission Secretary, who is at Assistant Director level. It is manned by lawyers and a public relations expert. It was however greatly depleted as at the end of the year under review from the resignation of the Commission Secretary and the two other lawyers, leaving only the Public Relations Officer in position.

5.4.1 Legal Services

(a) Internal Legal Opinions and Advices

The Legal & Corporate Services Division gave valuable legal opinions and advices to the Commission's other Divisions and Department, mostly the Competition Division, during the 2012 year under review.

Table 31: Legal Opinion and Advice Given to Other Divisions and Department in 2012

Division/ Department	Legal Opinion or Advice Sought and Given
Competition Division	<i>Whether the Commission has powers under the Competition Act [Chapter 14:28] to investigate complaints on imported counterfeit products:</i> The Division's opinion was to the effect that although Zimbabwe's Competition Act [Chapter 14:28] does not specifically provide for counterfeiting as a restrictive practice, there are some elements of counterfeiting that make it fall into the definition of the unfair business practice of 'misleading advertising' that is prohibited in terms of section 42 of the Act, thereby making it possible for the Commission to investigate such practices. In both misleading advertising and counterfeiting, there is deceit and pretense that something is what it is not, resulting in consumers being deceived in exercising their right to choice. Counterfeiting also raises some competition concerns in that it reduces the competitiveness of the original product. The original product finds itself in direct competition with the counterfeits and hence suffer a direct loss of sales. The counterfeit product unfairly and easily rides and benefits from a brand that has painstakingly built its image over many years. The Division was also of the view that since there is

	intellectual property legislation like the Trademarks Act [Chapter 20:04] that specifically deal with counterfeits and offer quicker remedies than the Competition Act. <i>Whether the services provided by City Councils of Harare and Bulawayo are economic activities as envisaged by section 3 of the Competition Act [Chapter 14:28]:</i> The Division's opinion was there are many areas that are not clear which forbids the coming up with a definite answer on whether or not the practices of municipalities are restrictive or not. There is need to verify which industries have raised issue with the prices of the municipal services and in what way the prices affect different companies. If there is a chance that the prices are preventing some companies from producing or distributing certain products or services then it will be a restrictive practice worth investigating. There is need to ascertain whether the services they are complaining of are provided by the municipalities only or there are other providers providing the same at cheaper prices though without capacity to service everyone. What are the tariffs in other towns for example Mutare, Gweru, Masvingo etc. If other municipalities are charging less then it means the companies or people in Bulawayo and Harare would not be able to compete with their counterparts. If other towns have access to cheaper utilities then it will mean competition has been affected. Is everyone getting the same services and are the services being availed to everyone at the same rate, quality and quantities? The issue of imported products may also be of concern in this case. If utilities charges in other countries are much cheaper than those in our country then it would mean that their cost of production will be less and therefore their products cheaper than the Zimbabwean products. <i>Whether the Industrial Development Corporation (IDC)'s proposed acquisition of a 49% shareholding in Allied Insurance (Pvt) Limited amounted to an acquisition of a controlling interest under the Competition Act [Chapter 14:28] for the purposes of notifying the transaction to the Commission:</i> The Division's opinion was that the way the term 'controlling interest' is defined in the Act is apparent that the legislature did not intend to give it the general commercial meaning of 51% shareholding. Instead the term was intended to assume a competition law related meaning, hence the law makers saw it fit to define it as they did in the Act, that is, to mean "any control whatsoever over the activities or assets of an undertaking". IDC/Allied Insurance transaction was therefore a merger as defined in the Act and notifiable to the Commission. <i>Whether legal action can be taken against Savanna Tobacco Company for consummating its merger with Burley Marketing Zimbabwe without notifying the Commission:</i> The Division noted that since it was being advised by Savanna's lawyers that it was not that company that acquired Burley Marketing, but a trading company called Ternville, there was need for evidence to establish that fact. The Competition Division was therefore advised to carry out further investigations to verify specified issues before a decision could be made on what appropriate legal action should be taken by the Commission. <i>Whether the allegations of excessive pricing by Econet Wireless Limited constituted a restrictive practice in terms of the Competition Act [Chapter 14:28]:</i> The Division noted that the competition legislation in Zimbabwe, unlike other jurisdictions like South Africa and the European Union, does not have specific provisions prohibiting excessive pricing. It also noted that the Competition Act only gives the Commission the mandate to monitor prices, costs and profits in any industry only as directed by the Minister. It was further noted the representations by the relevant sector regulator, the Posts and
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	Telecommunications Authority of Zimbabwe (POTRAZ), to the effect that it is difficult to establish that the super profits declared by Econet Wireless in 2011 were a result of excessive pricing as Econet Wireless, and all its competitors are price takers from the sector regulator. The Division was therefore of the view that since Econet and all its competitors are price takers from the same source for the same services, it is difficult to conceive how its pricing can restrict competition in any way. The Division was also of the opinion that since from the South African courts experience, an empirical and factual enquiry into the costs actually incurred is at the heart of the determination of economic value and thereafter excessive price, there is need for the Commission to do an in-depth study of the relevant sector and the issues at stake before engaging the sector regulator on their price setting methodology, costing analysis, etc. • <i>Whether the proposed acquisition of a 40% stake in Medtch Distribution by Titanium Marketing and Distribution (Pvt) Limited was notifiable under the Competition Act [Chapter 14:28]:</i> The Division inquired from the Company Registrar whether Titanium Marketing and Distribution was a registered company. It was advised that the company is not registered, and that its representatives had only come to the Registrar's offices for a name search and had not returned for the registration of the company. • <i>Whether the acquisition by Econet Wireless Limited's acquisition of a 45% stake in TN Bank Limited was a notifiable merger under the Competition Act [Chapter 14:28. Econet Wireless' legal advisor, Advocate Girach, had advised that the transaction was not a notifiable merger since Econet Wireless's 45% acquisition of shares in TN Bank did not amount to acquisition of a controlling interest]:</i> The Division advised that the Advocate's opinion implied that the term <i>controlling interest</i> means the holding by one person or group of a majority of the stock of a business, and this normally is 51% shareholding. Whilst this interpretation is generally correct for commercial and other legal purposes, it is however, incorrect for the specific purposes of competition law as defined in the Act and it defeats the purpose of the Act as a whole and the very purpose of merger investigation. In fact, had the legislature intended the term to have this general meaning, they should simply have stated such meaning in the Act. However, since the term was intended to assume a competition law related meaning, the law makers saw it fit to define it as they did in the Act, that is, to mean "<i>any control whatsoever over the activities or assets of an undertaking</i>". Breaking down the definition further, the literal meaning of "control" according to the Concise Oxford Dictionary, 10th Edition, is "the power to influence people's behaviour or the course of events". It was therefore concluded that the legislature having noted that the ordinary and general meaning of the term "controlling interest" would restrict the power of the Commission to investigate mergers that are likely to impact on the market structures and competition in Zimbabwe, proceeded to give the term a much broader meaning in the Act in order to suit the competition law context. It was further advised that, the acquisition of a stake and the ability of the acquirer to appoint Board members in any entity would enable the acquirer to further his/ her interests in that organization thereby influencing and in the process exercising some degree of control on the activities of the entity. The acquirer would thus have acquired a "<i>controlling interest</i>" in the said entity as defined in the Act. Whilst any person with more than 51% shareholding in an entity has the ability, to a greater extend, to influence the activities of that entity, that however, would not strip the remaining shareholders of their ability to vote, and to a greater extend influence the direction the entity will be run. Further, the fact that Econet would appoint some Board members who would vote and thereby influence the goings on in the Bank then it follows that Econet would have some control over the activities of TN Bank in the sense envisaged by the Act.
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Tariffs Division	<i>Whether importers of completely-built vehicles qualified for tariff relief assistance under the Competition Act [Chapter 14:28]:</i> The Division advised that the Commission has the statutory trade policy mandate of assisting or protection local industry. The term 'local industry' is however defined in terms of section 34B of the Competition Act [Chapter 14:28] as to mean "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". Importers of completely-built vehicles therefore do not qualify for tariff relief assistance under the Act since they do not fall under the definition of 'local industry'.
Finance & Administration Department	Opinion given on agreements of sale between the Commission and two family companies, Luminac Investments (Pvt) Limited and Molaya Investments (Pvt) Limited, of shares in two properties.

(b) External Advisory Opinions

The Division gave a number of advisory opinions, on request, to various external stakeholders during the year under review.

Table 32: Advisory Opinion Given to External Stakeholders in 2012

External Stakeholder	Advisory Opinion Given
BP & Shell Petroleum Dealers	BP & Shell Dealers raised objections to the <i>BP-Shell/FMI Energy Zimbabwe merger</i> over grievances to their contracts, and approached the Commission, through their lawyers, Dhlakama B. Attorneys, for advice on the way forward. The Division received from the dealers' lawyers copies of their contracts with BP & Shell prior to the merger with FMI Energy Zimbabwe (FMI), and their post-merger contracts with FMI in order to assess the veracity of the alleged anti-competitive practices by FMI. The Division considered the documents and drafted an opinion to the effect that since the dealers did not provide tangible evidence of FMI's alleged refusal to service and maintain equipment in terms of the prevailing agreements inherited by FMI from BP & Shell, and also took over the stations during the life of the dealers' contracts with BP & Shell, there was need for the Commission to carry out investigations in terms of section 33(5) of the Competition Act [Chapter 14:28] in order to establish FMI's compliance with its conditional approval of the FMI/BP & Shell merger. As far as the other complaints by the dealers are concerned, particularly those relating to FMI's dictating of prices and profit margins to dealers whilst competing with them downstream and giving preferential treatment to its service stations competing with the dealers, the Division advised that these are anti-competitive practices in respect of which the Commission has power to investigate in terms of section 28 of the Act.
CBZ Bank Limited	The Commission received from CBZ Bank Limited (CBZ) a request for advisory opinion on whether the proposed transaction between Standard Chartered Bank Zimbabwe Limited (SCB) and CBZ to enter into a partnership to share VISA PoS (point-of-sale) acquiring infrastructure does not contravene any provisions of the Competition Act [Chapter 14:28] (the Act). The request was made in terms of the Competition (Advisory Opinion) Regulations, 2011 published in Statutory Instrument 26 of 2011.

	The Legal & Corporate Services Division was requested to give the legal opinion. The Division gave its opinion that was to the effect that since the transaction would result in the direct acquisition and establishment by CBZ, which is a competitor of SCB, of a controlling interest in SCB's Visa PoS Acquiring business, the transaction constitute a merger as defined in the Act. The transaction is also a notifiable merger in terms of the Act since the combined annual turnover of the merging parties is way above the prescribed threshold of US\$1.2 million.
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(c) Legal Drafting

The Division during the 2012 year under review undertook some legal drafting on behalf of the Commission related to: (i) undertakings on conditional approval of mergers and acquisitions; (ii) notices on commencement of full-scale competition investigations; and (iii) orders against breach of the Competition Act [*Chapter 14:28*].

Table 33: Legal Drafting in 2012

Undertakings	Investigations Notices	Remedial Orders
- Memorandum of Undertaking (MoU) on the conditional approval of the <i>BP-Shell Zimbabwe/ FMI Energy Zimbabwe merger</i>. - Undertaking by Pioneer Corporation Africa Limited on the conditional approval of the <i>Pioneer Corporation/ Unifreight Holdings merger</i>.	- Notice on commencement of full-scale investigation into allegations of restrictive practices by the Innscor Group of companies in the fast moving consumer goods sector. - Notice on commencement of full-scale investigation into allegations of restrictive practices by Cimas Medical Aid Society in the pathological services sector.	Order against Cimas Medical Aid Society in terms of section 31(5) of the Competition Act [<i>Chapter 14:28</i>] for engaging in restrictive practices in the dialysis services sector.

(d) Other Legal Services

Other legal services provided by the Division during the year under review included the following:

- Undertaking legal searches on Agreements of Sale for the purchase of the Commission's office premises;
- Holding meetings with legal personnel of the National Indigenisation and Economic Empowerment Board to come up with an agreed understanding of the meaning of section 3 of the Indigenisation and Economic Empowerment Act [*Chapter 14:33*] (section 3 of that Act purports to give an indigenisation mandate to the Commission by providing that mergers should be approved only if 50% shareholding is held by indigenous Zimbabweans); and
- Assisting both the workers and management of the Commission in preparing legal briefs on a labour case involving the Commission and its employees;

5.4.2 Enforcement

The Legal & Corporate Services Division was also involved in the enforcement of the Commission's orders and decisions on competition and other cases.

Table 34: Enforcement of Commission Orders and Decisions in 2012

Case	Action Taken
Commission Order against ZESA Holdings for exploitative practices in the electricity distribution sector	Assisting the Administrative Court of Zimbabwe on the appointment of Assessors in terms of section 41 of the Competition Act [<i>Chapter 14:28</i>] in preparation for the court hearing of ZESA's appeal against the Commission's Order.
Commission Order against Total Zimbabwe for not complying with merger approval conditions	Assisting the Commission's external lawyers, Dube, Manikai and Hwacha Legal Practitioners, in preparing heads of arguments against Total Zimbabwe's notice of opposition to the Commission's application to register with the High Court of Zimbabwe its order on the revised conditions on the approval of the <i>Total Zimbabwe/ Mobil Oil merger</i> . The Commission's Order was subsequently registered in terms of section 33 of the Competition Act [<i>Chapter 14:28</i>] as a judgment of the High Court for enforcement purposes.
Penalty on SGI Holdings for breach of merger notification provisions of the Competition Act	Preparing legal brief for the Commission's external lawyers, Dube Manikai and Hwacha Legal Practitioners, to claim from SGI Holdings (Pvt) Limited the penalty for failure to notify the Commission in writing its acquisition of Freight Forwarders Zimbabwe (Pvt) Limited, through its subsidiary Stuttafords Removals, in terms of section 34A of the Competition Act [<i>Chapter 14:28</i>].
Commission Order against Cimas Medical Aid Society for engaging in restrictive practices in the processing of claims for dialysis treatment	Registering the order with the High Court of Zimbabwe as a judgment of the High Court for enforcement purposes.

5.4.3 Board Secretarial Services

The Legal & Corporate Services Division organised and provided secretarial services to all meetings of the Board of Commissioners that were held during the year under review (i.e., Ordinary and Special Meetings of the Commission, and meetings of the Commission's Standing Committees). A total of 17 such meetings were held during the year.

Table 35: Commission Meetings Provided with Secretarial Services

Commission Meetings	Committee Meetings
Forty-Eighth Ordinary Meeting of the Commission held on 26th January 2012;	Meeting of the Tariff Committee held on 3rd April 2012;

• Forty-Ninth Ordinary Meeting of the Commission held on 20th April 2012; • Fiftieth Ordinary Meeting of the Commission held on 28th June 2012; • Fifty-First Ordinary Meeting of the Commission held on 6th September 2012; • Fifty-Second Ordinary Meeting of the Commission held on 16th November 2012.	• Meeting of the Legal & Enforcement Committee held on 10th April 2012; • Meeting of the Mergers & Restrictive Practices Committee held on 13th April 2013; • Meeting of the Audit & Administration Committee held on 16th April 2012; • Meeting of the Legal & Enforcement Committee held on 21st June 2012; • Meeting of the Mergers & Restrictive Practices Committee held on 22nd June 2012; • Meeting of the Audit & Administration Committee held on 3rd September 2012; • Meeting of the Mergers & Restrictive Practices Committee held on 4th September 2012; • Meeting of the Audit & Administration Committee held on 9th October 2012; • Meeting of the Legal & Enforcement Committee held on 7th November 2012; • Meeting of the Mergers & Restrictive Practices Committee held on 9th November 2012; • Meeting of the Tariffs Committee held on 13th November 2012.
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The Division also played a leading role in the organisation of the following other Board events during the year: (i) stakeholder workshops (Stakeholder Workshop on Public Utilities Workshop and Stakeholder Strategic Plan Review Workshop held in the Vumba during the period 25 - 26 January 2012); and (ii) stakeholder hearings (Stakeholder Hearing into the Cotton Industry held on 3rd May 2012).

5.4.4 Corporate Governance

(a) Board Evaluation

Following the *Corporate Governance Incorporating Strategic Planning in Zimbabwe Workshop* that was held in Victoria Falls during the period 29 – 30 November 2011, the Legal & Corporate Services Division recommended to the Commission's Audit & Administration Committee that the Commission should hold a Board Evaluation Workshop before the end of its term in line with the Corporate Governance Framework for State Enterprises and Parastatals. The Commission at its Forty-Ninth Ordinary Meeting held on 20th April 2012 however noted that the term of office of the Board was expiring at the end of June 2012 and was therefore of the opinion that it did not add much value to evaluate the Board's outgoing members. It was however agreed to undertake annual Board evaluations to give room for improvement.

(b) Strategic Planning

The Division arranged the undertaking of the annual review of the Commission's Three-Year Strategic Plan: 2010-2012 at a workshop held in the Vumba on 26th January 2012. The workshop was attended by the Commission's major stakeholders.

(c) Corporate Governance Workshops and Seminars

The Division during the year under review made arrangements for members and staff of the Commission to attend and participate at three important corporate governance events: (i) a Corporate

Ethics Seminar held in Harare on 10th May 2012; (ii) an Institute of Directors (IOD) Corporate Governance Forum held in Nyanga during the period 2 – 3 August 2012; and (iii) the IOD Annual Corporate Governance Summit held in Victoria Falls during the period 19 – 21 September 2012..

5.4.4 Awareness, Promotion and Visibility

(a) Fairs Exhibitions

The Legal & Corporate Services Division organised and arranged the Commission's participation and/or attendance at the following fairs and exhibitions during the year under review:

- Zimbabwe International Trade Fair (ZITF), held in Bulawayo during the period 24 – 28 April 2012;
- 6th Annual Exhibition of the Bindura Book Fair, Educational, Careers and Information Dissemination Expo, held in Bindura during the period 17 – 19 May 2012;
- Zimbabwe-China Trade Fair, held in Harare during the period 2 – 4 July 2012;
- Harare Agricultural Show, held in Harare during the period 17 - 25 August 2012.

(b) Publications and Articles

The Division arranged for the publication in *The Herald* and *Chronicle* daily newspapers of an informative trade policy article prepared by the Tariffs Division on *The COMESA-EAC-SADC Tripartite Free Trade Area: Benefits and Implications*. The article was published in the two newspapers on 16th March 2012.

(c) Media Coverage

The operations and activities of the Commission we positively reported in not less than 25 newspaper articles during the year under review, an average of 2 articles per month.

Table 36: Newspaper Coverage of Commission Operations and Activities in 2012

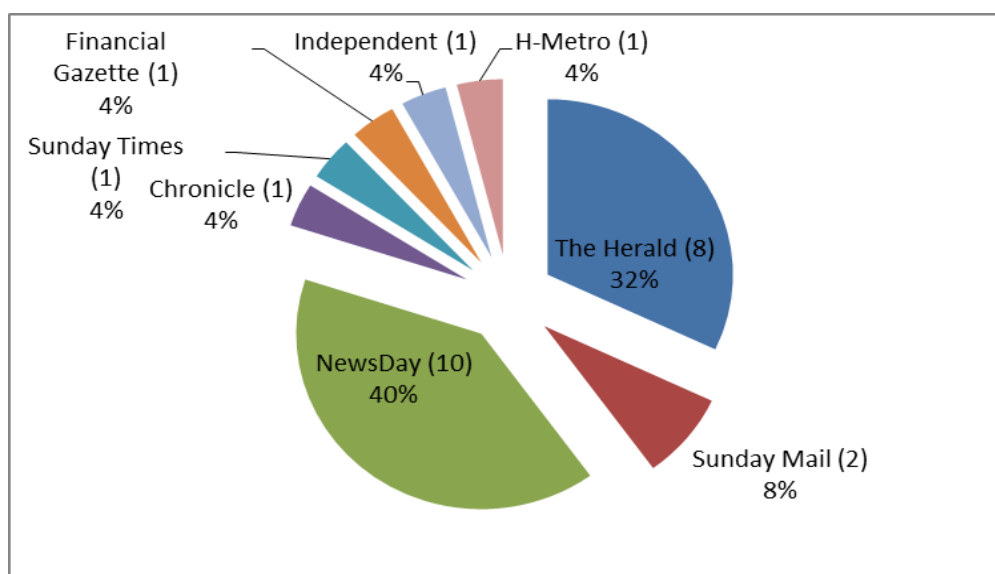
No.	Newspaper	Article
1	<i>The Herald Business</i> of 27 January 2012	Front-page article titled "Commission Wants Utility Charges Reduced", on the holding of the Commission's stakeholder workshop on pricing of public utilities that was held in the Vumba on 25 th January 2012.
2	<i>The Sunday Mail Business</i> of 5-11 February 2012	Front-page article titled "CTC Summons Bread Makers", on the commencement of the Commission's full-scale investigation into the suspected bread cartel.
3	<i>NewsDay</i> of 15 February 2012	Article titled "BP-Shell Deal Under Spotlight", on the Commission's investigation into the fulfilment of the conditions it imposed on the approval of the <i>FMI Energy Zimbabwe/BP-Shell Zimbabwe merger</i> .
4	<i>NewsDay</i> of 17 February 2012	Article titled "CTC Underfunded – Sibanda", on the Chairman's submission to the Parliamentary Portfolio Committee on Industry and Commerce that the Commission was experiencing operational challenges due to serious underfunding and high labour turnover.
5	<i>NewsDay</i> of 17 February 2012	<i>Readers' Feedback</i> column on 'Feedback on Zesa Bills', in which one reader appealed to Zesa management "not to waste money appealing the ruling against the High Court judgment made in favour of the Competition and Tariff

		Commission”, and another referred to the difficulties of law enforcement agents, including the Commission, in curbing white collar crime.
6	<i>The Herald Business</i> of 27 February 2012	Feature article on “Mergers, Acquisitions and Takeovers”, in which the Director was interviewed.
7	<i>Business Chronicle</i> of 22 March 2012	Front-page article titled “Council Tariffs Probe Report Complete”, on the Commission’s preliminary investigation into allegations of abuse of monopoly position by the City of Bulawayo.
8	<i>The Herald</i> of 13 April 2012	An article on excessive tariffs by ZESA, in which reference was made to the Commission’s investigation and findings into abuse of monopoly positions by ZESA and TelOne.
9	<i>The Sunday Times</i> (Southern Africa edition) of 15 April 2012	In an article titled “Commission Roasts ZESA’s Poor Billing”, on the Commission’s report on its full-scale investigation into ZESA’s abuse of monopoly position in the production and distribution of electricity.
10	<i>The Herald Business</i> of 18 April 2012	Article titled “POTRAZ Okays Mobile Phone Tariffs”, on the Commission’s feedback report on stakeholder recommendations on the socio-economic effects of public utilities.
11	<i>NewsDay</i> of 20 April 2012	Article titled “More Mergers On Cards”, on the Commission’s forecast of merger transactions during the year.
12	<i>The Herald Business</i> of 1 May 2012	Article titled “ZESA Tariff Model Blamed for Electricity Woes”, on the need for ZESA to reconsider its tariff model to strengthen its internal capacities for the rehabilitation of its infrastructure, as recommended by the Commission.
13	<i>The Financial Gazette</i> of 26 April – 2 May 2012	Article titled “Jaggers Building Derelict, Smaller Players Desert Sector”, in which the Commission’s recent determinations on mergers in the retail services sector were mentioned.
14	<i>NewsDay</i> of 5 June 2012	Article titled “Meikles Rolls Out Pick ‘n Pay Branch”, on the opening of the first Pick ‘n Pay supermarket in Harare’s Kamfinsa suburb, in which the Commission’s approval of the <i>TM Supermarkets/Pick ‘n Pay merger</i> was referred to.
15	<i>The Sunday Mail</i> of 17 – 23 June 2012	Article titled “Firm Challenges BP & Shell Acquisitions”, on an application filed in the High Court seeking nullification of the acquisition of BP & Shell assets by FMI Energy Zimbabwe, which had been approved by the Commission.
16	<i>NewsDay</i> of 28 September 2012	Article titled “CTC Probes Mergers”, on mergers and acquisitions examined by the Commission during the year.
17	<i>NewsDay</i> of 2 October 2012	Feature article titled “CTC on Mergers and Acquisitios”, on an interview held with the Director of the Commission on various aspects of mergers and acquisitions.
18	<i>NewsDay</i> of 5 October 2012	Article titled “Pick ‘n Pay Foray Ups Competition”, referring to the Commission-approved acquisition of TM Supermarkets by Pick ‘n Pay, and acquisition of Makro by OK Zimbabwe.
19	<i>NewsDay</i> of 22 October 2012	Article titled “CTC to Widen Scope of Operations”, on the Commission’s plans to move into better office accommodation in preparation for increased and

		expanded operations.
20	<i>Zimbabwe Independent</i> of 16 – 22 November 2012	Article titled “Econet Moves to Control TN Bank” on the acquisition of TN Bank by Econet Wireless which was conditionally approved by the Commission.
21	<i>H-Metro</i> of 18 December 2012	Article titled “CTC Investigates Restrictive Practices by Private Abattoirs”, on the commencement of the Commission’s full-scale investigation into allegations of restrictive practices by private abattoirs in the meat industry.
22	<i>NewsDay</i> of 19 December 2012	Article titled “Harare Probed”, on the Commission’s full-scale investigation into allegations of Harare City Council’s abuse of monopoly position in the provision of municipal services.
23	<i>The Herald Business</i> of 19 December 2012	Article titled “Zimplow Seeks Merger with TPHL”, on the Commission-approved acquisition of Tractive Power Limited Holdings by Zimplow Limited.
24	<i>The Herald Business</i> of 21 December 2010	Article titled “CTC Probes Private Abattoirs”, on the commencement of the Commission’s full-scale investigation into the meat industry.
25	<i>The Herald</i> of 27 December 2012	Article titled “Mayor Dismisses CTC Probe”, on the response by the Mayor of Bulawayo to the commencement of the Commission’s full-scale investigation into allegations of the Bulawayo City Council’s abuse of monopoly position in the provision of municipal services.

The most newspaper articles on the Commission’s operations and activities during the 2012 year under review were published by *NewsDay* daily newspaper, closely followed by *The Herald* daily newspaper. The regional *Sunday Times* and the local *H-Metro* also published articles on the Commission, so did the business newspapers *Financial Gazette* and *Independent*.

Graph 4: Newspaper Coverage in 2012



4.4.5 Divisional Staff Training

The Legal & Corporate Services Division continued to train its staff to develop operational capacity. During the year under review, all members of staff of the Division underwent some training in the relevant areas.

Table 37: Legal and Corporate Services Training in 2012

Month of Training	Training Course	Staff Trained
January 2012	Management Training Bureau Minute Rapporteurs Course, Harare	Legal Counsel, and Legal Officer
February 2012	Bowman & Gilfillan Africa Competition Law Course, Johannesburg, South Africa	Commission Secretary
April 2012	Public Administration International Competition Law Training Course, London, United Kingdom	Legal Counsel
June 2012	Telecommunications Network Cost Analysis and Modelling Course, Harare	Legal Officer

5.5 Finance and Administration Services

The Commission's Finance & Administration Department provides financial and administrative services to the Commission's other operational Divisions, which are essential for the effective undertaking of the Commission's operations. The many administrative support functions of the Department include human resources management, maintenance and effective allocation of physical assets, and control and efficient utilisation of financial resources. The Department in particular has the crucial role of assisting the Director in the performance of his statutory function in terms of section 17 of the Competition Act [*Chapter 14:28*] of "administering the Commission's affairs, funds and property".

The Department is headed by a Manager, and is manned by staff with financial and administrative skills. Staff levels in the Department remained stable throughout the year. There were however staffing gaps in both the Finance and Administration Sections of the Department that compromised its service delivery.

4.5.1 Administration

(a) Human Resources

The 2012 year under review saw a resurgence of staff turnover following nil turnover during the previous 2011 year. In January 2012, the Commission lost one of its Economists in the Tariffs Division. In October 2012, the Legal Counsel in the Legal & Corporate Services Division tendered her resignation from the Commission, and in November 2012 both the Commission Secretary and the Legal Officer in that Division also left the employ of the Commission.

With the exception of the Economist in the Tariffs Division, who left to further his academic qualifications in South Africa, all the other resignations from the Commission were for 'greener pastures' because of poor and deteriorating conditions of service, particularly basic salaries, in the Commission.

Poor conditions of service in the Commission had been worsened by the decision of the parent Ministry of Industry and Commerce to terminate employee grocery allowances in the Commission that the Commission had introduced to cushion its employees against low basic salaries. The termination of the grocery allowance demotivated the Commission's employees, and worsened labour relations in the organisation as non-managerial employees referred the matter to the Ministry of Labour for arbitration. While the matter was finally resolved with an Independent Arbitrator ruling in favour of the employees, the arbitral award was given too late to prevent the resignations.

Even though the Government had in January 2012 approved an upward adjustment of basic allowances (housing, transport and representation allowances) in the Commission, and had also adjusted upwards basic salaries for managerial employees in the E and F grades, the adjustments fell far short of employee expectations.

(b) Staff Development

For career development and planning, the Commission commissioned a job evaluation exercise by a professional human resources consultancy firm. The job evaluation report was used to submit proposals to the Commission's Audit & Administration Committee on an appropriate job grading system that allows clear advancement within the organisation. The Committee was still considering the proposals as at the end of the year under review.

Besides formal training in the relevant operational fields, the Commission continued to give technical and financial assistance to its employees in advancement of their academic qualifications.

Table 38: Staff Members Given Education Technical and Financial Assistance in 2012

Staff Member	Position	Division/ Department	Programme
Miss C. Mashava	Chief Economist	Competition	Master of Commerce in Strategic Management and Corporate Governance
Mr. I. Tausha	Senior Economist	Competition	Master of Economics
Mrs. C. Dzenga	Senior Economist	Competition	Master 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	Association of Certified Chartered Accountants (ACCA)
Mr. L Chiwara	Sub-Accountant	Finance & Administration	Association of Certified Chartered Accountants (ACCA)
Ms. F. Chikosi	Public Relations Officer	Legal & Corporate Services	Bachelor of Science Management and Entrepreneurial Development Studies
Mr. D. Chinoda	Economist	Competition	Master of Economics
Mr. E. Manjenga	Economist	Competition	Master of Economics

(c) Infrastructural Development

The computerisation of the Commission was completed during the year under review, with the installation of the Commission's broadband for internet connections and website. All the Commission's professional staff were also connected to the internet with their own workstations.

Following a Board resolution that the Commission should acquire its own office premises to save on high and increasing rentals of leased premises, the search for such premises commenced in earnest during the month of January 2012. By the end of the year under review, suitable premises had been identified in three of Harare's suburbs of Highlands, Milton Park and Belgravia. The Commission however failed to secure the premises because of bureaucratic delays in the Government's decision making processes.

4.5.2 Finance

(a) Funding

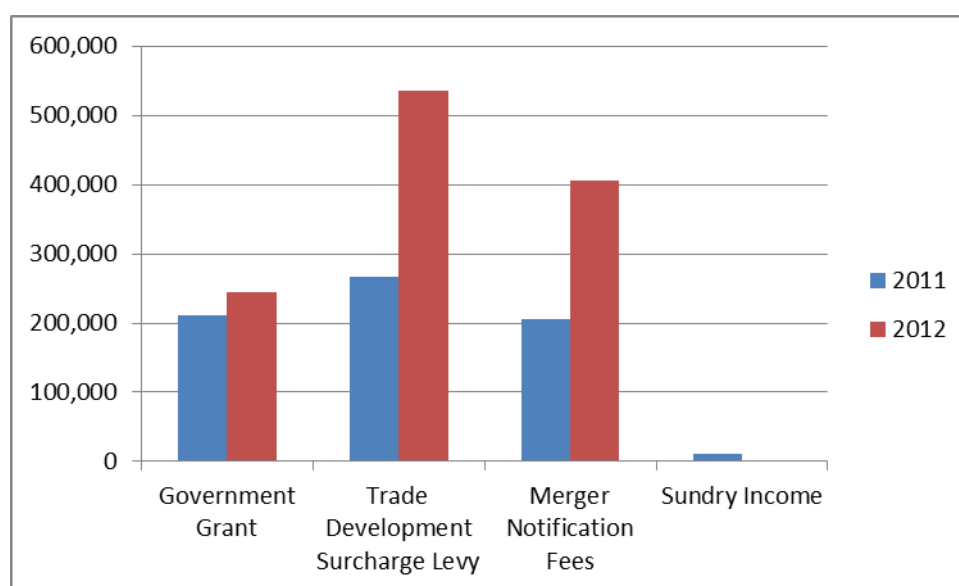
The Commission's sources of funding during the 2012 year under review, as compared with those of the previous 2111 year, are shown below.

Table 39: Comparative Sources of Commission Funding

Source of Funds	2011 (US\$)	2012 (US\$)	Change	
			(Real)	(%)
Government Grant	210 405	244 327	+33 922	16.1%
Trade Development Surcharge Levy	267 402	535 200	+267 798	100.1%
Merger Notification Fees	205 986	405 000	+199 014	96.6%
Sundry Income	10 928	2 616	-8 312	-76.1%
Totals	694 721	1 187 143	+492 422	70.9%

The Commission during the 2012 year under review received from various sources funds totalling US\$1 187 143, a 70.9% increase over funds received during the previous 2011 year. The increase was largely attributed to the over 100% increase in receipts from the Trade Development Surcharge Levy, from US\$267 402 in 2011 to US\$535 200 in 2012. Merger notification fees received were also substantial, a 96.6% increase, from US\$205 986 in 2011 to US\$405 000. The Government grant increased modestly by 16.1%, from US\$210 405 in 2011 to US\$244 327 in 2012.

Graph 9: Comparative Funding Sources in 2011 and 2012



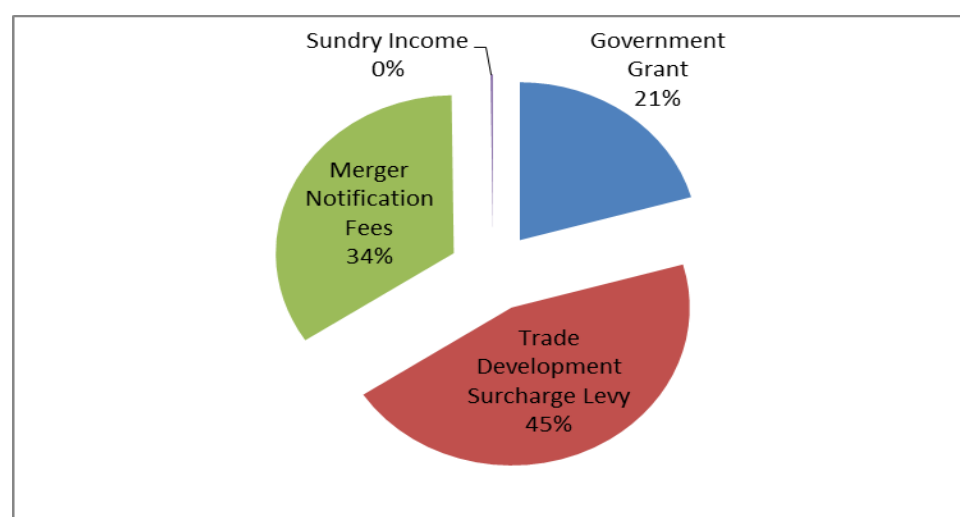
For a non-commercial Statutory Body like the Commission with predominantly regulatory and advisory functions, the Government grant should be the largest source of funding. The situation in

2012 whereby the trade development surcharge levy and merger notification fees contributed nearly 80% of the Commission's funding was therefore not healthy for planning purposes because of the uncertainty and unreliability of such non-governmental funding sources.

Table 40: Comparative Funding Contributors in 2012

Income Category	Receipts (US\$)	Contribution (%)
Government Grant	244 327	20.6%
Trade Development Surcharge Levy	535 200	45.1%
Merger Notification Fees	405 000	34.1%
Sundry Income	2 616	0.2%
Totals	1 187 143	100%

Graph 10: Funding Source Distribution in 2012



(b) Financial Performance

The report of the independent auditors, AMG Global Chartered Accountants, on the Commission's financial statements for the year ended 31st December 2012 is attached. The opinion of the auditors was that the financial statements were properly drawn up in conformity with International Financial Reporting Standards (IFRS) and, in all material respects, gave a true and fair view of the financial position of the Commission as at 31st December 2012, and of the results of its operations, and its cash flows, for the year then ended. It was also their opinion that the Commission applied in all material respects the requirements of the Competition Act [Chapter 14:28].

From a deficit of US\$125 832 during the previous 2011 year, the Commission recorded a surplus of US\$83 512 during the 2012 year under review. The Commission's administrative expenses during the year under review amounted to US\$1 125 256, up from the US\$865 320 incurred during the previous year. Staff costs at US\$536 159 were the highest expenditure during the year, constituting 47.6% of total expenditure, followed by travel and subsistence, mainly related to the undertaking of investigations into competition and tariff cases, at US\$124 083 (11.0%). Other major expenditures were rental expenses (US\$79 993, 7.1%), Commissioners' expenses (US\$48 077, 4.3%), and advertising and promotion costs (US\$43 023, 3.8%). Legal costs (US\$18 080 during the year under review, and US\$200 during the previous year) are on the increase in line with the increase in court challenges against the Commission's decisions on competition cases.

The Commission's Balance Sheet as at the end of the year under review was relatively strong. With current assets amounting to US\$260 087, and current liabilities being US\$48 90, the liquidity ratio was a healthy 5.3 indicating the Commission's ability to pay off its short-term debt obligations. Accumulated funds as at 31st December 2012 totalled US\$112 557, most of which were in high interest-earning investment accounts for eventual use in purchasing immovable property for the Commission's offices. The short-term investments were with various banks and financial institutions, Trust Bank, IDBZ, Kingdom Unit Trusts, Metbank and Tetrad Investments Bank, at an average interest rate of 17% per annum.

4.7 Constraints and Outlook

The major constraint that the Commission faced in its operations during the year under review was labour unrest in the organisation that was caused by poor conditions of service. The unrest led to the Commission and its non-managerial employees squaring against each other in labour courts, and to some professional staff tendering their resignations or looking for better paying jobs elsewhere. Productivity in the Commission was greatly affected.

The other operational constraints faced by the Commission during the year under review included human resources constraints, caused by the government suspension of recruiting staff in public organisations that prevented the Commission from replacing staff and recruiting new staff. The current staff was therefore overworked, particularly the sole driver who had to transport non-driving professional staff from the operational Divisions on their investigations assignments, resulting in decline in productivity. Financial constraints also besieged the operations of the Commission during the year as the Commission was unable to attend a number of international workshops and seminars on important competition and trade tariffs issues.

However, one of the recommendations of the UNCTAD voluntary peer review on implementation of competition policy and law in Zimbabwe that were addressed at the Government was the increase of the Commission's budget to optimal levels, and that salaries for the Commission's employees should also be substantially increased for reasons of motivation on the part of the employees and retention of staff on the part of the Commission as an employer. Those recommendations were accepted by the Government, including the Ministry of Finance. It is therefore expected that the implementation of the peer review recommendations during the coming 2013 year will produce the desired results of improvements in the Commission's employee conditions of service and general financial position of the Commission.

The outlook for the Commission also looks bright as its visibility improves, and the positive results of its competition and trade tariffs work are being acknowledged by its stakeholders, particularly the consumers. The Commission's relevance in the economic development of the country is thus assured.

Alexander J. Kububa
Director