

ANNUAL REPORT

COMPETITION AND TARIFF COMMISSION

2010

27 May 2011

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

Honourable Minister

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

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

Yours sincerely

Dumisani Sibanda
Chairman

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PART I: GOVERNANCE

1.1 OBJECTIVES AND FUNCTIONS

The Competition and Tariff Commission of Zimbabwe was established in terms of section 4 of the Competition Act [Chapter 14:28]. The Commission has the twin mandates of implementing Zimbabwe's competition policy and law, and executing the country's trade tariffs policy. Its primary objectives are to promote and maintain competition and competitiveness in the economy of Zimbabwe through the: (i) prevention and control of restrictive practices, including monopoly situations; (ii) prohibition of unfair business practices; (iii) regulation of mergers and acquisitions; (iv) correction of unfair trade practices; and (v) provision of protection and assistance to local industry.

To achieve and meet the above objectives, the Commission's statutory functions in terms of section 5 of the Competition Act are as listed in Box 1.

Box 1: Functions of the Commission

Subject to the Competition Act, the functions of the Commission shall be:

- (a) to encourage and promote competition in all sectors of the economy; and
- (b) to reduce barriers to entry into any sector of the economy or to any form of economic activity; and
- (c) to investigate, discourage and prevent restrictive practices; and
- (d) to study trends towards increased economic concentration, with a view to the investigation of monopoly situations and the prevention of such situations, where they are contrary to the public interest; and
- (e) to advise the Minister of Industry and Commerce in regard to: (i) all aspects of economic competition, including entrepreneurial activities carried on by institutions directly or indirectly controlled by the State; and (ii) the formulation, co-ordination, implementation and administration of Government policy in regard to economic competition; and
- (f) to provide information to interested persons on current policy with regard to restrictive practices, acquisitions and monopoly situations, to serve as guidelines for the benefit of those persons; and
- (g) to undertake investigations and make reports to the Minister of Industry and Commerce relating to tariff charges, unfair trade practices and the provision of assistance or protection to local industry; and
- (h) to monitor prices, costs and profits in any industry or business that the Minister of Industry and Commerce directs the Commission to monitor, and to report its findings to the Minister; and
- (i) to perform any other functions that may be conferred or imposed on the Commission by the Act or any other enactment.

1.2 VISION AND MISSION STATEMENT

The following are the Commission's Vision and Mission Statement as enunciated in its Three-Year Strategic Plan: 2010-2012:

Vision

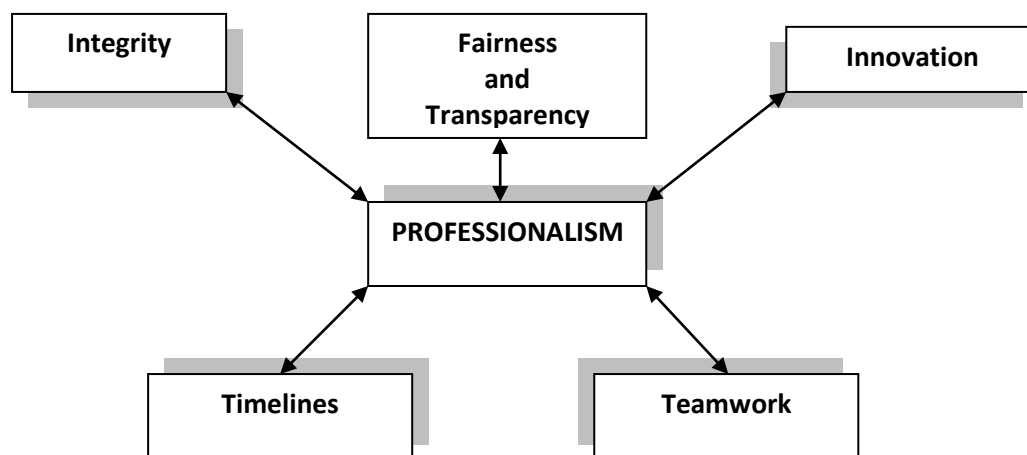
To be the leading advisory and regulatory authority on competition and trade tariffs nationally, regionally and internationally.

Mission Statement

- We will promote competition and fair trade through the provision of quality advisory and regulatory services whilst attracting, developing and retaining competent staff.
- We will be a responsible corporate citizen.

Values

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



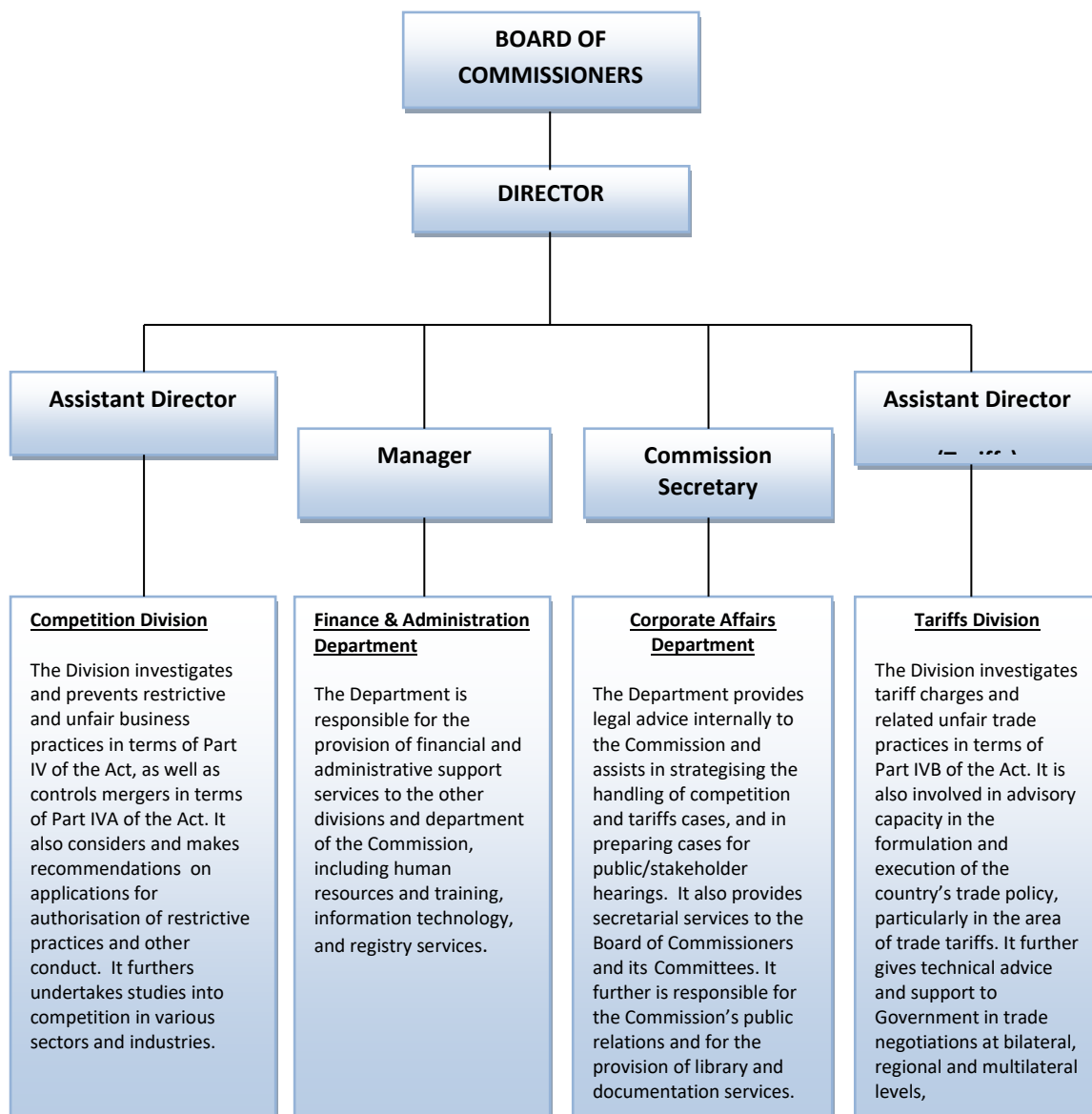
1.3 DECISION MAKING STRUCTURES

The Commission is a quasi-judicial body, particularly in its competition operations. In that regard, its adjudicative functions rest with the Board of Commissioners while its investigative functions have been delegated to its Directorate. The Board of Commissioners also gives the Commission policy guidance.

1.3.1 Organogram

Figure 1 shows the organizational structure of the Commission during the 2010 year under review.

Figure 1: Organisational Structure of the Commission in 2010



1.3.2 Board of Commissioners

The Board of Commissioners is comprised of members appointed on a part-time basis by the Minister of Industry and Commerce “for their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment”.

The following were members of the Board of Commissioners throughout the 2010 year under review:

**Mr. Dumisani Sibanda
(Chairman)**

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

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

Mr. Dandira is a holder of an MBA qualification from the University of Zimbabwe. He became a Fellow Member of the Institute of Administration and Commerce (IAC) of South Africa after obtaining three diplomas of the IAC. He served as Commissioner on the previous Competition and Tariff Commission Board during the period 2006-2009. Currently he is a Management and Training Consultant of First Link Consultants (Private) Limited.

**Mr. Peter Kadzere
(Member)**

Mr. Kadzere is a holder of a Bachelor of Science Economics (Hons) degree and an MBA both from the University of Zimbabwe. He is a Fellow Member of the Institute of Chartered Secretaries and Administrators (FCIS) and is a registered Public Accountant. He has 25 years of progressive experience in the insurance, pensions and financial services sectors. He is currently the Managing Director of Kingdom Asset Management and sits on a number of boards.

**Mrs. Chrysostoma Kanjoma
(Member)**

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

**Mr. Antony Mutemi
(Member)**

Mr. Mutemi holds a BSc. Eng. (Hons) degree from the University of Zimbabwe and an MBA from the same University. He is a Fellow of the Zimbabwe Institute of Engineers (ZIE) and a member of the South African Institution of Mechanical Engineers (SAIMechE). Currently he is the Group Managing Director of Steelnet (Zimbabwe). He has been with Steelnet (Zim) Group and its predecessor Group, TH Zimbabwe for 14 years.

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

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

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

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

**Mrs. Constance Tsomondo-Shamu
(Member)**

Mrs. Shamu is an Associate Member of the Institute of Chartered Secretaries and Administrators in Zimbabwe and also a registered Public Accountant. She has a Master of Business Administration Diploma with Natal University. She served as a Commissioner on the previous Board from 2006 to March 2009. Currently She is involved in business ventures that include safari hunting, service stations, retail shops and farming.

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

Mr. Sigobodhla holds a Bachelor of Administration degree and MSc Economics degree. He is a Public 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 Capital Edge (Private) Limited, an advisory services unit in July 2008 and is currently the Managing Director.

For the better exercise of its functions, the Board of Commissioners has established in terms of section 14 of the Competition Act the following four Standing Committees:

- the Audit & Administration Committee (which oversees the Commission's responsibilities related to internal controls, risk management, and financial and other resource management);
- the Mergers & Restrictive Practices Committee (which considers the Directorate's reports on preliminary investigations into restrictive and unfair business practices, as well as into examinations of mergers and acquisitions);
- the Tariffs Committee (which considers the Directorate's reports on requests for tariff relief, investigations into unfair trade practices, and other issues related to trade tariffs); and
- the Legal & Enforcement Committee (which oversees compliance with the Commission's remedial orders and other decisions, as well as with laws and regulations).

The membership of the Standing Committees throughout the 2010 year under review is as shown in Table 1:

Table 1: Standing Committee Membership in 2010

Audit & Administration Committee Members	Mergers & Restrictive Practices Committee Members	Tariffs Committee Members	Legal & Enforcement Committee Members
Mrs. C Tsomondo-Shamu (chairperson) Mr. P Kadzere (member) Mrs. C Kanjoma (member) Mr. AMutemi (member)	Mr. S Z Dandira (chairperson) Mr. P Kadzere (member) Mr. G Sigobodhla (member) Mrs. C Tsomondo-Shamu (member) Mrs. V Zifudzi (member)	Mr. T M Ndebele (chairperson) Mrs. C Kanjoma (member) Mr. F L Myambo (member) Mrs. V Zifudzi (member)	Mrs. V Zifudzi (chairperson) Mr. S Z Dandira (member) Mr. T M Ndebele (member) Mrs. C Tsomondo-Shamu (member)

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

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

Table 2 shows the number and duration of Commission meetings (i.e., those that are attended by members of the Board of Commissioners) that were held during the year under review.

Table 2: Number and Duration of Commission Meetings in 2010

Type of Meeting	Abr.	No. of Meetings	Total Duration of Meetings	Ave. Duration Per Meeting
Ordinary Commission Meetings	OCM	5	21.83hrs	4.37hrs
Special Commission Meetings	SCM	5	13.42hrs	2.68hrs
Audit & Administration Committee	A&AC	4	13.25hrs	3.32hrs
Mergers & Restrictive Practices Committee	M&RPC	3	4.8hrs	1.6hrs
Tariffs Committee	TC	2	3.83hrs	1.92hrs
Legal & Enforcement Committee	L&EC	2	1.92hrs	0.96hrs
Public/Stakeholder Hearings Meetings	P/SHM	4	21.00hrs	5.25hrs
Totals		25	80.05hrs	1.33hrs

The Board of Commissioners met ten times during the year, five times in Ordinary meetings, and five times in Special meetings. In addition, four Public/Stakeholder Hearings on competition cases were held at Board level. All the Board's Standing Committees met during the year, with the most frequent meetings, at four meetings, being those of the Audit & Administration Committee.

No meetings of the Pensions Board of Trustees were held during the month, mainly because the Commission's employee pension fund with Old Mutual Pensions was still being reactivated following the introduction of the multicurrency system during the previous year.

All the Commission's meetings during the year under review were fairly well attended, as shown in Table 3.

Table 3: Attendance at Commission Meetings in 2010

Member	OCM	SCM	A&AC	M&RPC	TC	L&EC	P/SHM	Total
No. of Meetings	5	5	4	3	2	2	4	25
D Sibanda	5	5	n/a	n/a	n/a	n/a	4	14
S Z Dandira	4	3	n/a	3	n/a	1	3	14
P Kadzere	3	2	4	3	n/a	n/a	3	15
C Kanjoma	4	2	2	n/a	2	n/a	3	13
A Mutemi	4	5	3	n/a	n/a	n/a	4	16
F L Myambo	3	2	n/a	n/a	2	n/a	2	9
T Ndebele	4	1	n/a	n/a	1	2	1	9
C Tsomondo-Shamu	2	1	2	1	n/a	0	2	8
G Sigobodhla	1	1	n/a	2	n/a	n/a	2	6
V Zifudzi	5	3	n/a	1	0	2	3	14

Commissioners' remuneration during the year totaled US\$14 355, as shown in Table 4.

Table 4: Commissioners' Remuneration in 2010

Commissioner	Board Fees (US\$)	Sitting Fees (US\$)	Allowances (US\$)		Total Remuneration (US\$)
			Transport	Airtime	
D Sibanda	650.00	330.00	650.00	570.00	2 200.00
S Z Dandira	585.00	310.00	325.00	400.00	1 620.00
6P Kadzere	520.00	320.00	325.00	265.00	1 430.00
C Kanjoma	520.00	235.00	325.00	265.00	1 345.00
A Mutemi	520.00	280.00	325.00	265.00	1 390.00
F L Myambo	520.00	150.00	325.00	265.00	1 260.00
T Ndebele	520.00	160.00	325.00	265.00	1 270.00
C Tsomondo-Shamu	520.00	150.00	325.00	265.00	1 260.00
G Sigobodhla	520.00	110.00	325.00	265.00	1 220.00
V Zifudzi	520.00	250.00	325.00	265.00	1 360.00
Totals	5 395.00	2 295.00	3 575.00	3 090.00	14 355.00

The Minister of Industry and Commerce reviewed upwards by about 100% the Commissioners' remuneration with effect from 1 December 2010, to the levels shown in Table 5.

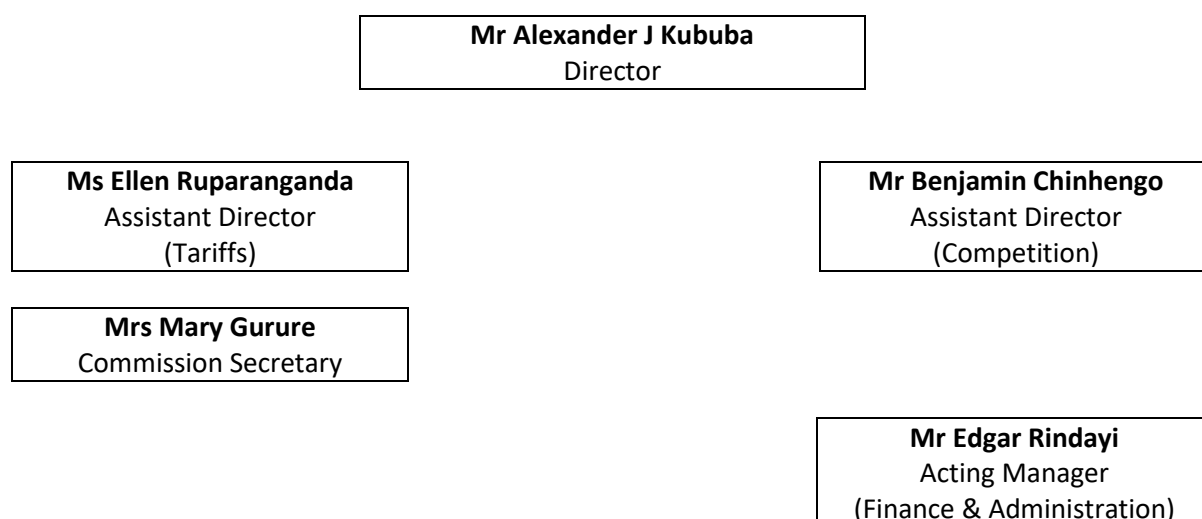
Table 5: Commissioners' Remuneration Levels as at the End of 2010

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

1.3.3 Directorate

The Directorate has two operational Divisions (the Tariffs Division and the Competition Division) and two support Departments (the Corporate Affairs Department and the Finance & Administration Department) that have the responsibility of carrying out the Commission's strategic plans and the day-to-day running of the organization. The Directorate is headed by the Director, who has the statutory responsibility for "administering the Commission's affairs, funds and property and for performing any other functions that may be conferred or imposed upon him by (the Competition Act) or that the Commission may delegate or assign to him".

The Director has established a Management Committee under his chairmanship, which assists in the carrying out of his responsibilities. Members of the Management Committee include heads of the Directorate's Divisions and Departments. The Committee was comprised of the following as at the end of the 2010 year under review:



The Management Committee usually meets on a monthly basis to decide mainly on administrative and human resources issues.

The Directorate also has the following two other specialist Committees, both of which are chaired by the Director, for the effective execution of its functions and carrying out of its duties:

- the Finance Committee (which is an extension of the Management Committee and also usually meets once a monthly to consider purely financial resources issues); and

- the Operations Committee (which meets as and when necessary to basically discuss outstanding competition and tariffs cases and other operational issues – the Committee’s meetings are attended by heads of Divisions and Departments and their relevant professional staff).

PART II: PRIORITISATION OF WORK

In the formulation of the Commission’s Three-Year Strategic Plan: 2010-2012, it was noted that the Commission had emerged from its formative stage, and had overcome the effects of its organizational change from the merger of the former Tariff Commission and Industry and Trade Competition Commission. It was agreed that the organisation’s strategic priorities should now be closely aligned to the effective execution of its statutory mandates in the area of competition and tariffs. The identified strategic priorities include the following: (i) staff morale and motivation; (ii) alignment of structure and work processes to strategic priorities; (iii) centre of information, knowledge and expertise; (iv) approach and methodology to prioritisation; and (v) effective advocacy and communication. The strategic priorities are expanded in Table 2.

Table 2: Strategic Priorities for 2010-2012

Staff Morale & Motivation	<ul style="list-style-type: none"> • Motivation and turnover • Competitive salaries and remuneration • Recruitment, advancement and promotion • Performance management system • Training and development
Alignment of Structure & Work Processes to Strategic Priorities	<ul style="list-style-type: none"> • Clarification of roles and responsibilities, functional synergies, and resource requirements • Creation of interdivisional work teams, and management of the teams • Streamlining of decision-making structures • Expanding the organisation • Change management
Centre of Information, Knowledge & Expertise	<ul style="list-style-type: none"> • Commission is a knowledge-based and knowledge intensive organization • Management and sharing of information: (i) putting in place technology and infrastructure (case management system and share point server); (ii) training and capacity building to effectively use technology; (iii) development of culture of information sharing and knowledge management
Approach & Methodology to Prioritisation	<ul style="list-style-type: none"> • Need for coherent approach to deal with anti-competitive market structures and practices • Clarity of approach in factor determinants in dealing with tariff relief cases • Direct resources to high impact and strategic areas (develop framework for prioritising sectors and cases) • Transparency and consistency in decision-making
Effective Advocacy & Communication	<ul style="list-style-type: none"> • Improving dialogue with policy makers • Broadening participation by stakeholders • Effectively communicating the Commission’s work

It was agreed that the Commission’s core business operations in the areas of competition and tariffs should be strategised so as to lead to the increase of its visibility and revenue base. It was noted that while awareness programmes and campaigns would make the Commission more visible, the visibility would be limited if the organisation does not adequately execute its statutory mandates to the satisfaction of its stakeholders. Also, the effective and adequate execution of the Commission’s statutory mandates would increase its relevance and importance to the Government and business community, leading to increased income from the Government grant and other statutory fees.

In its competition operations, the Commission had so far been concentrating more on mergers and acquisitions than on restrictive and unfair business practices. Considerable expertise in merger control had thus been amassed in the Commission over the years to the point that the law of diminishing returns could affect continued concentration of resources to that area. Mergers and acquisitions were also largely entered into by relatively big firms, while most small and medium-sized enterprises were not involved in such transactions. It was therefore not surprising that while the Commission was known to most big firms in Zimbabwe, it was hardly known by small and medium-sized enterprises, which require competition protection the most. More concentration on the control and prevention of restrictive and unfair business practices was therefore needed. That area was identified as the one that produces better results in promoting competition in the economy, as well as in increasing public awareness to the existence and activities of the Commission. For the purposes of maximising the utilisation of the Commission's scarce resources, it was agreed that the handling of competition cases involving restrictive and unfair business practices should be prioritised using clear criteria, such as: (i) impact on consumers, and on other socio-economic policies such as industrialisation, indigenisation, promotion of small and medium-sized enterprises, etc.; (ii) economic growth and development; and (iii) competition implementation experience. It was also agreed that the following would be the priority sectors:

- agro-processing and food distribution;
- pharmaceuticals;
- infrastructure and construction;
- intermediate industrial products;
- financial services;
- telecommunications; and
- beverages.

The priority sectors in the area of implementation of competition policy and law are outlined in Table 6.

Table 6: Competition Priority Sectors In 2010-2012

Agro-processing and Food Distribution	<ul style="list-style-type: none"> • Involves the milling of grains (wheat, maize), baking of bread, canning of fruit and vegetables, etc. • Affects all consumers, particularly the poor and vulnerable. • High levels of concentration, thus potentially anti-competitive markets. • Prevalence of competition and consumer complaints.
Pharmaceuticals	<ul style="list-style-type: none"> • Affects all people of various statuses and backgrounds. • The manufacturing sector highly concentrated, and subjected to restrictive IPR laws and practices.
Infrastructure and Construction	<ul style="list-style-type: none"> • Inputs generally from highly concentrated industries (e.g., cement, bricks, timber). • Highly susceptible to collusive and cartel-like behaviour (price-fixing, market-sharing, bid-rigging).
Intermediate Industrial Products	<ul style="list-style-type: none"> • Includes basic chemicals and basic metal products which form key inputs to diversified manufactured products. • High concentration levels and/or dominant firms, resulting in ineffective or no competition. • Low production costs from economies of scale not passed on to more labour intensive downstream activities.

Financial Services	<ul style="list-style-type: none"> • Little evidence of rivalry amongst the sector players. • Public concern and complaints regarding levels of bank charges – with lending rates much higher than deposit rates. • Incidence of costs falling heavily on low income customers and small businesses.
Telecommunications	<ul style="list-style-type: none"> • Highly concentrated, and therefore potentially anti-competitive. • Has implications on productivity and competitiveness of various other industries and sectors. • High incidence of consumer complaints.
Beverages	<ul style="list-style-type: none"> • Highly concentrated markets, dominated by few companies. • High consumer interest. • Frequent product shortages, and product price increases. • Prevalence of competition complaints.

In its tariffs operations, the Commission is primarily concerned with assisting and protecting local industry using the trade tariff regime. The focus of Zimbabwe’s tariff policy is to promote the development and growth of a competitive and export-oriented domestic industry. Using the tariff, the Commission assists local industry through making recommendations to the relevant Government authorities (particularly the Ministry of Industry and Commerce, and the Ministry of Finance) on import duty reductions and waivers, tariff splits, and even tariff protection. Protection of local industry should however not be across-the-board, since that breeds inefficiency, but should be limited to selected industries, such as those that: (i) manufacture quality and cost-competitive products; (ii) are infant industries; (iii) are exporting firms, and those with export potential; (iv) have developmental projects and programmes with broad social impact; and (v) have exhibited a future potential for cost competitiveness.

The trade tariffs policy is also used for revenue purposes. However, with the movement towards deeper trade liberalisation within the region, high reliance on tariff revenue is expected to decline and compensated through broadening of the tax base and taxing the end product rather than production. This implies that the country should shift from using the tariff policy as an instrument of revenue collection to using it as an instrument of industrial development, particularly in the development of strategic and infant industries.

The undertaking of sectoral studies is also an important activity of the Commission. The Commission undertakes sectoral studies aimed at evaluating the impact of tariff reforms on industrial competitiveness. The primary purpose of the studies is to help the Commission in making more informed recommendations to Government on tariff changes.

It was therefore noted that prioritisation was also required in the Commission’s future handling of tariffs cases requiring tariff relief, including in the undertaking of sectoral studies. The identification of priority sectors would be based on clear criteria, such as: (i) economic impact (employment, export earnings, contribution to the fiscus, etc.); and (ii) regional and international competitiveness. From its sectoral studies, the Commission would be in a better position to assist the Government in the identification of strategic and infant industries requiring tariff protection.

The Three-Year Strategic Plan: 2010-2012 as adopted by the Commission has specific strategic objectives for the Plan period, which are outlined in Table 7:

Table 7: Strategic Objectives for 2010-2012

Operational Area	Strategic Objectives		
	12 Months	24 Months	36 Months
Tariffs	To propose harmonisation of the Competition Act and the Finance Act in terms of trade tariffs determination		
	To provide assistance to local industry in accordance with set standards		
	To provide technical assistance to Government		
	To propose measures that tilt the balance of trade in favour of Zimbabwe		
	To undertake sectoral studies that inform trade policy formulation		
Competition	To regulate mergers and acquisitions		
	To encourage competition in all sectors of the economy		
	To investigate anti-competitive agreements and abuse of dominant positions		
Corporate Affairs	To improve the visibility of the Commission by 100%		
	To ensure up to date legal advice in accordance with set service level agreement standards		
	To provide timely and accurate secretarial services to the Board of Commissioners in accordance with set standards		
	To ensure that the Commission adheres to good corporate governance principles.		
Administration and Finance	To enhance financial resources to fund the 2010-2012 Strategy Plan		
	To attract, develop and retain competent staff		
	- To improve administrative service delivery		

The identified priority areas for the 2010 year were as follows: (i) visibility; (ii) research; (iii) resource mobilization; (iv) staff retention; and (v) information management.

PART III: CHAIRMAN'S STATEMENT

Introduction

The Commission during the year under review met all its statutory mandates in the fields of competition policy and law, and trade tariffs policy. It also achieved most of the performance targets set in its Three-Year Strategic Plan: 2010-2012. The achievements were commendable given the many challenges that it faced in its operations during the year.

Board of Commissioners

There were no changes in the Commission's Board of Commissioners during the year, and the Board remained at the full statutory complement of ten members throughout the year. The Board was extremely busy during the year. It held five Ordinary Meetings, and another five Special Meetings, as well as undertook four public/stakeholder hearings into competition cases. Attendance at Board meetings was fairly good. On average, there was a 62% attendance at Board meetings during the year, with 100% attendance by the most attendee, and 29% by the least attendee. The Commission's Standing Committees met a total of eleven times during the year, also with fairly good attendances.

The issue of low Commissioners' remuneration continued to besiege the Commission throughout the year. Even though the Minister reviewed by about 100% the Commissioners' remuneration in December 2010, the resultant levels were still too low as to incentive Commissioners to devote their time on Commission business.

Activities

There was a marked improvement in the Commission's operations during the year under review in terms of both quantity and quality of investigations undertaken. In pursuit of its conscious decision to tackle public monopolies, the Commission went way out to redress ZESA Holdings' abuse of monopoly position in the electricity production and distribution services sector. The Commission's efforts in that regard were well received by both domestic and commercial users of electricity. Other public monopolies that were tackled were in the water and telephone services sectors. Other anti-competitive practices were however not neglected. A number of competition investigations into collusive and cartel-like behavior, and into misleading advertising, were also undertaken, with the necessary remedial action taken.

In the area of trade tariffs, the Commission continued to give valuable assistance and protection to local industry. In that regard, a number of companies were given tariff relief in the form of duty reductions and tariff splits. While some companies requested tariff protection against imported goods, the Commission was reluctant to recommend such protection to government since it infuses inefficiency, and instead preferred assistance in the form of duty reduction on raw materials and intermediate goods. Protection against unfair imports should rightfully be provided under the country's trade defence legislation, that is, the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002, and the Competition (Safeguards) (Investigation) Regulations, 2006. In that regard, the Commission initiated an awareness campaign in the newspapers to educate the business community on the protection it can get from that legislation.

The Commission made valuable contributions to the Mid-Term Fiscal Review in the area of import duties on raw materials and basic commodities, which were well received by the Government. It also did sterling work in the provision of technical advice and support to Government in regional and multilateral trade negotiations under the auspices of the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Economic Partnership Agreement (EPA) between the Eastern and Southern Africa (ESA) countries and the European Union (EU). Issues connection with market access on agricultural and non-agricultural products (NAMA), and sensitive lists of products to be excluded from trade liberalisation under the negotiations, continued to occupy the Commission.

Challenges

The Commission operated under a number of challenges during the year under review, which generated a lot of operational risks. Most of risks were interrelated, and arose mainly from financial constraints. During the first half of the year, the Commission operated under such severe financial constraints that it was unable to even procure replacement computers, let alone replenish its aged and decimated fleet of vehicles, which are invaluable tools of its trade. The operations of the Commission were therefore put at great risk.

Financial constraints also prevented the Commission from improving the conditions of service of its employees, such that it was unable to attract suitable qualified persons to fill the critical post of Finance and Administration Manager, which had become vacant during the first half of the year. Again, the risk of failing to recruit staff, and even losing staff, was heightened. Even though the Commission's financial position was somewhat improved during the last quarter of the year, the risks that had been generated by the earlier financial constraints were deep-rooted.

The Commission's investigation into unfair business practices in the electricity services sector, a regulated sector, brought out great challenges with the relevant sector regulator, the Zimbabwe Electricity Regulatory Commission (ZERC). ZERC challenged the Commission's jurisdiction over competition matters in the electricity sector, raising the feared jurisdictional conflicts over competition matters in regulated sectors. While the Commission had anticipated such jurisdictional conflicts, and had successfully engaged the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) on the conclusion of a cooperation agreement, ZERC rejected those overtures. The Commission will nevertheless continue to engage as many sector regulators as possible on the conclusion of cooperation agreements.

Acknowledgements

The support and assistance that the Commission got during the year from all the relevant Divisions of its parent Ministry of Industry and Commerce is gratefully acknowledged. In particular, the Offices of the Minister, of the Deputy Minister, and of the Permanent Secretary were extremely supportive of the Commission's operations.

The Commission also received valuable cooperation in its various operations from virtually all the economic Ministries, including the Ministry of Finance, the Ministry of Economic Planning and Investment Promotion, the Ministry of Energy and Power Development, as well as the Ministry of State Enterprises and Parastatals. Its meeting of its statutory mandates could have been extremely difficult without good working relations with other public organizations, such as the Zimbabwe Revenue Authority, the Zimbabwe Investment Authority, and various other sector regulators.

Business and consumer associations, such as the Confederation of Zimbabwe Industries, the Zimbabwe National Chamber of Commerce, and the Consumer Council of Zimbabwe, contributed immensely to the Commission's tariffs and competition activities, and positively participated in the formulation of the Commission's Strategic Corporate Plan. The National Economic Consultative Forum must be commended for affording the Commission the opportunity, on various occasions, of advocating for competition in various sectors.

Special commendation must be given to the United Nations Conference on Trade and Development for its continued and unwavering support of the Commission's competition programmes. UNCTAD Secretariat's Competition Law and Consumer Policy Branch, in particular, gave full support to the Commission's request to have its implementation of competition policy and law peer reviewed for improvement. COMESA and SADC also continued to give the Commission financial and technical support in the fields of both trade tariffs and competition.

These acknowledgements would not be complete if mention is not made of two individuals who stood out in actively supporting the Commission's long outstanding membership of the International Competition Network. These are Professor William Kovacic, of the US Federal Trade Commission, and Mr Bruno Lasserre, of the French Autorité de la Concurrence. It is hoped with confidence that the efforts of these two gentlemen will bear fruit during the coming year of 2011.

Dumisani Sibanda
Chairman

PART IV: DIRECTOR'S REPORT ON OPERATIONS

The revival of the Commission's operations commenced in earnest during the 2010 year under review, following a marked decline during the previous years resulting from the macro economic downturn of the country over the last decade. The Commission's operational revival was largely attributed to the country's economic recovery following the introduction of the Multicurrency system of trading in February 2009, which had improved the viability and competitiveness of many business enterprises.

The Commission had also greatly improved the efficiency of its work from the human resources point of view. The lowest staff turnover was witnessed during the year, from improvements in non-monetary employment benefits, and the Commission's staff in its operational Divisions effectively used the long experience in the implementation of competition policy and law, and execution of trade tariffs policy, that they had accumulated over the years.

The prioritization of work under the Commission's Three-Year Strategic Plan: 2010-2012 also guided the Commission in selecting programs that yielded greater socio-economic impact. For example, in the area of competition, monopolization in the utilities sector was targeted, and that greatly increased the Commission's visibility to both the business community and the general public, leading to increased referral of competition cases to it for investigation. In the area of tariffs, contributions to the Government's national budgetary processes strengthened the Commission's advocacy importance, leading to greater appreciation by the Government of the Commission's operations.

4.1 COMPETITION OPERATIONS

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

The Competition Division of the Commission investigates and makes recommendations to the Mergers & Restrictive Practices Committee of the Board of Commissioners on all competition cases, including competition studies. The Division's staff establishment and strength during the 2010 year review remained as shown in Table 8.

Table 8: Staff Establishment and Strength of the Competition Division in 2010

Position	Grade	No. of Posts On Establishment	No. of Posts Filled	Staff Strength
Assistant Director	E2	1	1	100%
Chief Economists	D3	2	0	0%
Senior Economists	D2	2	1	50%
Economists	D1	6	2	33%
Law Officers	D1	2	0	0%
Investigators	D1	5	0	0%
Totals		18	4	22%

With a staff strength of only 22%, the Competition Division was grossly understaffed throughout the year under review. For example, the Division did not have any Law Officers during the year, and had to rely on the Corporate Affairs Department for legal opinion and advice on competition issues. It also did not have specialised Investigators, and the analytical Economists had to undertake their own investigations into competition cases.

Table 9 shows the manning of the Competition Division during the year under review.

Table 9: Manning of the Competition Division in 2010

Name of Officer	Position	Qualification	Duration
Mr. Benjamin Chinhengo	Assistant Director	Business Studies and Administration	Throughout the Year
Miss Cecilia Mashava	Senior Economist	Economics	Throughout the Year
Ms. Calistar Dzenga	Economist	Economics	Throughout the Year
Mr. Isaac Tausha	Economist	Economics	Throughout the Year

4.1.1 COMPETITION CASES

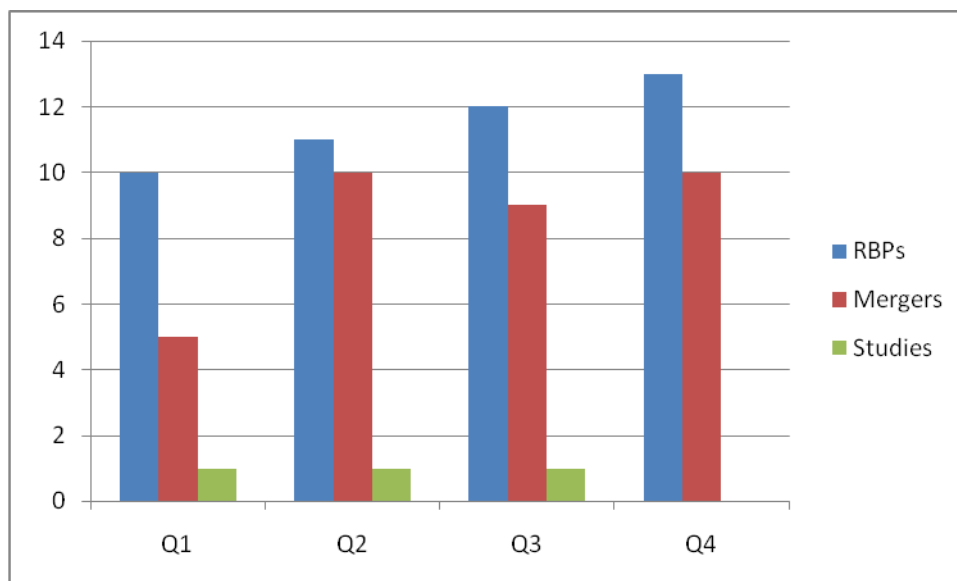
During the 2010 year under review, the Commission handled a total of 33 competition cases, up from the 24 cases handled during the previous year. Table 10 shows the number of different competition cases handled during the year as compared with those handled during the previous years.

Table 10: Number of Competition Cases Handled Over the Years

Case Category	1999-2001	2002-2004	2005-2007	2008	2009	2010	Total
Restrictive Practices	58	61	54	14	15	18	220
Mergers and Acquisitions	24	78	81	16	9	14	222
Competition Studies	9	12	13	2	1	1	38
Totals	91	151	148	32	25	33	480

The handling of the competition cases during the 2010 year under review was more intense during the second half of the year as shown in Graph 1. However, even though the graph shows a relatively low case handling intensity during the first Quarter of the year, that period experienced a very high activity rate on the handling of the Commission's investigation into abuse of monopoly position in the electricity production and distribution sector, which included public hearings into the matter.

Graph 1: Competition Case Handling Intensity in 2010



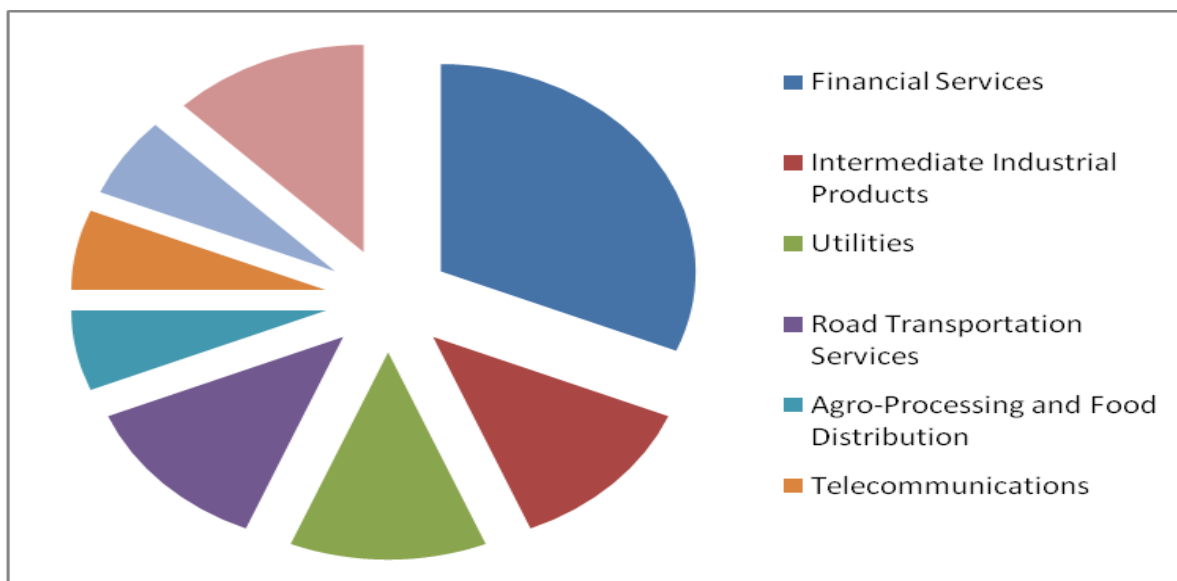
In its competition operations, the Commission intervened not less than sixteen times in various sectors and industries, as shown in Table 11. The most interventions were in the financial services sector, followed by the intermediate industrial products sector, the utilities sector, the road transportation services sector, and then by the agro-processing and food distribution sector, the telecommunications services sector, and the medical services sector.

Table 11: Sectoral Competition Interventions in 2010

Sector	No. of Interventions		
	<i>Restrictive Practices</i>	<i>Mergers</i>	<i>Total</i>
Financial Services	0	5	5
Intermediate Industrial Products	2	0	2
Utilities	2	0	2
Road Transportation Services	1	1	2
Agro-processing and food distribution	1	0	1
Telecommunications	1	0	1
Medical Services	1	0	1
Other	0	2	2
Totals	8	8	16

Most of the competition interventions during the 2010 year under review were in the priority sectors identified in the Commission's strategic plan (i.e. the financial services sector, the intermediate industrial products sector, the agro-processing and food distribution sector, and the telecommunications services sector, as shown in Graph 2.

Graph 2: Sectoral Distribution of Competition Interventions in 2010



(a) Restrictive Business Practices

The Commission during the 2010 year under review investigated a total of 18 competition cases involving restrictive practices. The term ‘restrictive practice’ is defined in terms of section 2(1) of the Competition Act [Chapter 14:28] as to have the meaning in Box 2.

Box 2: Definition of ‘Restrictive Practice’ In the Competition Act

“Restrictive practice” means -

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

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

- (i) restricting the production or distribution of any commodity or service;
- (ii) limiting the facilities available for the production or distribution of any commodity or service;
- (iii) enhancing or maintaining the price of any commodity or service;
- (iv) preventing the production or distribution of any commodity or service by the most efficient or economical means;
- (v) preventing or retarding the development or introduction of technical improvements in regard to any commodity or service;
- (vi) preventing or restricting the entry into any market of persons producing or distributing any

	commodity or service;
(vii)	preventing or retarding the expansion of the existing market for any commodity or service or the development of new markets therefor;
(viii)	limiting the commodity or service available due to tied or conditional selling.

The definition of ‘restrictive practice’ in the Competition Act therefore covers both unilateral conduct of one firm (dominance and its abuse, or monopolization) and coordinated conduct by two or more firms engaged in collusive and cartel-like behavior (anti-competitive agreements of both horizontal and vertical nature).

Most of the restrictive practices under the Act are considered using the ‘rule of reason’ approach, i.e., an attempt is made to evaluate any efficiency or pro-competitive features of the restrictive practice against its anti-competitive effects to decide whether or not the practice should be prohibited. The *de minimus* rule is also used in the consideration of the practices, in that the practice must materially restrict competition to be prohibited.

Some restrictive practices are however *per se* prohibited in terms of section 42 of the Act. These are termed ‘unfair business practices’ in the Act, and include: (i) misleading advertising; (ii) false bargains; (iii) distribution of commodities or services above advertised price; (iv) undue refusal to distribute commodities or services; (v) bid-rigging; (vi) collusive arrangement between competitors; (vii) predatory pricing; (ix) resale price maintenance; and (x) exclusive dealing.

Sources of the Commission’s competition cases involving restrictive practices included: (i) complaints from the business community and general public; (ii) referrals from government departments and sector regulators; and (iii) initiations by the Commission. In handling competition cases, the procedure followed is that a preliminary investigation into the complaint in terms of section 28 of the Competition Act is undertaken by the Competition Division to determine whether or not a *prima facie* case exists to warrant a full-scale investigation. If no competition concerns are found, the case is closed. If some competition concerns are found, but not of a serious nature, negotiations may be held with the respondent party in terms of section 30 of the Act on the discontinuance of the restrictive practice resulting in the conclusion of undertakings or consent agreements. If serious competition concerns are found, a full-scale investigation, requiring the holding of public or stakeholder hearings, is undertaken into the matter. Full-scale investigations are held at the Board of Commissioners level.

During the 2010 year under review, 10 new competition cases involving restrictive practices were referred to the Commission for investigation, with 8 cases carried over from the previous year. Decisions were made on 8 cases, and 10 cases were carried forward to 2011. Figure 2 shows the cases handled during the year under review.

Figure 2: Restrictive Practices Cases Handled in 2010

Cases Brought Forward from 2009	8
New Cases Referred in 2010	10
Total Cases Handled in 2010	18
Cases Concluded in 2010	8
Cases Carried Forward to 2011	10

Of the 8 cases that were concluded during the year: (i) 2 were closed at preliminary investigation stage for absence of competition concerns or lack of evidence on the alleged restrictive practices; (ii) 1 was closed after imposition of remedial orders; (iii) 1 was recommended for conclusion of a consent agreement; (iv) 1 was referred to the Attorney General’s Office for prosecution; and (v) 3 were recommended for full-scale investigations.

Table 12 shows the cases that were concluded during the year.

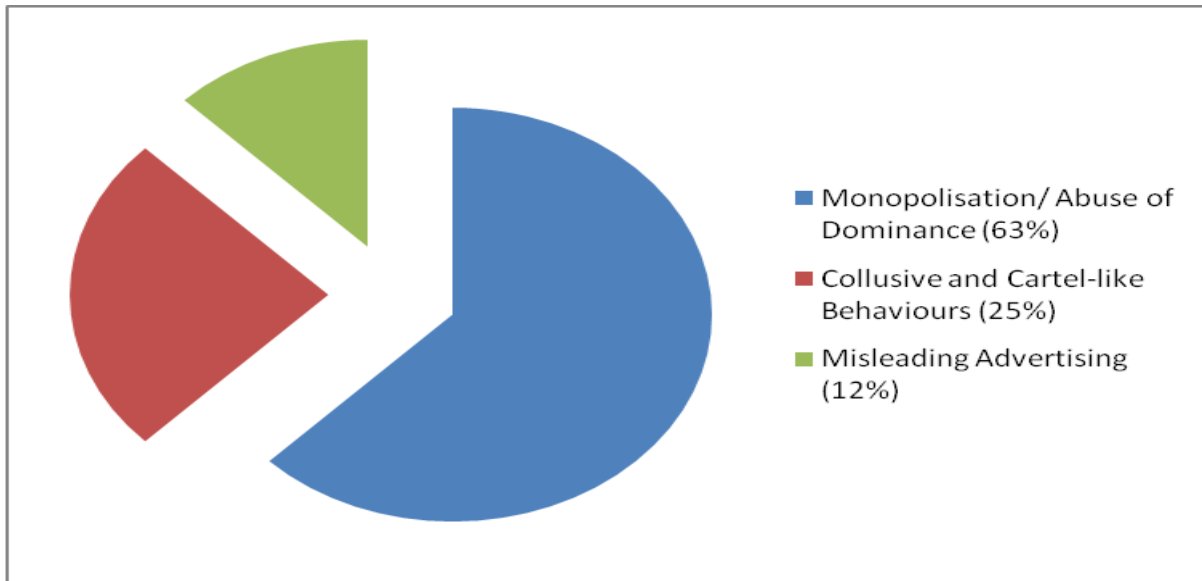
Table 12: Restrictive Practices Cases Concluded in 2010

Case	Competition Concerns	Commission Decision
1. Preliminary Investigation into Allegations of Restrictive Practices in the Dialysis Treatment Medical Services Sector	Abuse of Monopoly Position	<p>The preliminary investigation established a <i>prima facie</i> case that Cimas Medical Aid Society was abusing its dominant position in the medical insurance services sector by not honouring claims by its members for dialysis treatment undertaken at medical centres not run by the medical aid society.</p> <p>The Commission agreed to undertake a full-scale investigation in terms of section 28 of the Competition Act into the allegations. It was also agreed that since dialysis is a critical process which has fatal consequences, a probation notice in terms of section 29 of the Act should be issued to Cimas Medical Aid Society requiring it to honour claims for dialysis treatment received at other medical centres pending the outcome of the investigation.</p>
2. Preliminary Investigation into Allegations of Restricted Practices in the Fixed Line Telephone Services Sector	Monopolisation/ Abuse of Dominance	<p>The preliminary investigation established a <i>prima facie</i> case that TelOne was abusing its monopoly position in the fixed line telephone services sector by engaging in various anti-competitive practices of an exploitative nature.</p> <p>The Commission agreed to undertake a full-scale investigation in terms of section 28 of the Competition Act into the allegations.</p>
3. Preliminary Investigation into Suspected Restrictive Practices in the Tyre Manufacturing and Distribution Industry	Abuse of Dominant Position	<p>The Commission noted that Dunlop Zimbabwe, the alleged perpetrator of the restrictive practices in the vehicle tyre distribution industry, which involved excessive pricing, was not dominant in the relevant market since it held only 15% of that market (with the rest held by tyre importers). It also noted that no evidence of excessive pricing on the part of Dunlop Zimbabwe had been found. It was therefore agreed to close the case.</p>
4. Full-Scale Investigation into Allegations of Restrictive	Monopolisation/ Abuse of Dominance	<p>Commission issued remedial orders against the exploitative practices of ZESA Holdings and its</p>

Practices in the Electricity Production and Distribution Sector		subsidiaries, and also made recommendations to the relevant government authorities on the promotion of competition in the electricity services sector.
5. Preliminary Investigation into Allegations of Abuse of Monopoly Position by the Municipality of Harare in the Provision of Treated Water	Monopolisation/ Abuse of Dominance	<p>The investigation established a <i>prima facie</i> case that the Municipality of Harare was abusing its monopoly position in the provision of treated water in the relevant market through: (i) excessive pricing; and (ii) price discrimination.</p> <p>Commission agreed that the Municipality of Harare be engaged in negotiations in terms of section 28 of the Competition Act on the discontinuance of the exploitative practices.</p>
6. Preliminary Investigation into Allegations of Unfair Business Practices in the Road Transportation Services Sector	Collusive and Cartel-like Behaviour	The allegations were that Pioneer Africa Limited and Unifreight (Pvt) Limited were engaged in collusive agreements or arrangements in the road transportation industry, or had merged without the approval of the Commission. The preliminary investigation however found no evidence that the two companies were engaged in collusive arrangements or had merged. The case was therefore closed for lack of evidence of the allegations.
7. Preliminary Investigation into Allegations of Unfair Business Practices in the Grinding Mill Manufacturing and Distribution Industry	Misleading Advertising	<p>The investigation unearthed concrete evidence supporting the allegations that Appropriate Technology Africa (ATA) was manufacturing hammer mills and selling them as Precision Grinders' <i>Hippo</i> grinding mills, thereby misleading the public.</p> <p>The Commission agreed to refer the case to the Attorney-General's Office for prosecution in terms of section 42(3) of the Competition Act.</p>
8. Preliminary Investigation into Allegations of Unfair Business Practices in the Bread Making Industry	Collusive and Cartel-like Behaviour	<p>The investigation established a <i>prima facie</i> case that bread manufacturers had concluded a price-fixing agreement under the auspices of their association.</p> <p>The Commission agreed to undertake a full-scale investigation in terms of section 28 of the Competition Act into the matter.</p>

The majority of the cases that were concluded during the year involved monopolization/ abuse of dominance, with some cases involving collusive and cartel-like behavior, and misleading advertising, as graphically shown in Graph 3

Graph 3: Restrictive Practices Considered in 2010



(i) Investigations Into Abuse of Dominance

The Commission’s investigations into restrictive practices during the 2010 year under review were largely on abuse of dominance in line with its strategic plans. In that regard, the investigations were extended to natural and statutory monopolies in the utilities sector.

Abuse of dominance, or monopolization, constitutes a very harmful form of restrictive business practice by the mere fact that it involves abuses of an exclusionary nature (which operate against industry welfare) and/or of an exploitative nature (which operate against consumer welfare). It can actually be viewed as equally harmful to competition as collusive and cartel-like behavior.

Most abusive practices of dominant firms are analysed using the ‘rule of reason’ approach since while the practices are anti-competitive, they can also have pro-competitive and efficiency elements. Some vertical restraints, for instance, have strong efficiency and consumer welfare benefits. Certain abusive practices of dominant firms however are inherently harmful and are thus *per se* prohibited in some jurisdictions, particularly those in developing countries. For example in Zimbabwe, abusive practices such as resale price maintenance, predatory pricing, and exclusive dealing are *per se* prohibited in terms of section 42 of the Competition Act.

The Commission is required in terms of section 32(2) of the Competition Act to generally regard a restrictive practice as contrary to the public interest if the practice is engaged in by a person with substantial market control over the commodity or service to which the practice relates, i.e., if is in a dominant position. In terms of section 2(2) of the Act, a person has substantial market control over a commodity or service if: “(a) being a producer or distributor of the commodity or service, he has the power, either by himself or in concert with other persons with whom he has a substantial economic connection, profitably to raise or maintain the price of the commodity or service above competitive levels for a substantial time within Zimbabwe or any substantial part of Zimbabwe; or (b) being a purchaser or user of the commodity or service, he has the power, either by himself or in concert with other persons with whom he has a substantial economic connection, profitably to

lower or maintain the price of the commodity or service below competitive levels for a substantial time within Zimbabwe or any substantial part of Zimbabwe”.

Abuse of dominance cases are complex, and require a combination of economics, legal and investigative skills, and even cost accounting skills in cases involving excessive pricing. Multi-skilled teams are therefore required in the investigation of abuse cases. Since abuse of dominance has to be assessed using the ‘rule of reason’ approach, there is also a requirement to weigh up anti-competitive effects against any efficiencies and pro-competitive elements that may arise from the unilateral conduct of dominant firms. All this makes such abuse cases longer to investigate than other restrictive business practices.

The complexity of abuse of dominance cases thus places considerable strain on the Commission’s resources, in terms of both time and human resources. During the 2010 year under review, in particular, the Commission’s Competition Division was hamstrung in the handling of abuse cases, not only because of the low staff strength of the Division but also because of its limited legal and accountancy skills.

Besides the five abuse of dominance cases that the Commission concluded during the year under review, as shown in Table 9, seven other abuse cases were under investigation as at the end of the year. These involved abusive practices in various sectors and industries, such as: (i) the intermediate industrial products sector; (ii) the utilities sector; (iii) the agro-processing and food distribution sector; (iv) the telecommunications services sector; (v) the health services sector; (vi) the music recording industry.

Full-Scale Investigation into Allegations of Abuse of Monopoly Position in the Electricity Production and Distribution Sector

In October 2009, the Commission undertook a preliminary investigation in terms of section 28 of the Competition Act [Chapter 14:28] in response to complaints and allegations from the general public and the business community that ZESA Holdings (Private) Limited (ZESA) was abusing its monopoly position in the electricity distribution services sector by engaging in various restrictive practices of an exploitative nature.

The Commission at its Special Meeting held in November 2009 resolved to undertake a full-scale investigation into the allegations of ZESA’s abuse of monopoly position following the establishment of a *prima facie* case from the preliminary investigation. In accordance with the requirements of the Competition Act on the undertaking of full-scale investigations, the Commission published a notice in the *Government Gazette* and the local press announcing the commencement of the full-scale investigation and calling upon interested parties and persons to submit written representations on the matter. Public Hearings on the investigation were held in both Harare and Bulawayo in April 2010.

The Commission in 2001 had undertaken a similar investigation into complaints from the general public that the then Zimbabwe Electricity Authority (ZESA), a statutory body that had been established under the Electricity Act [Chapter 13:19], was abusing its monopoly or dominant position in the provision of electricity power on the local market by engaging in the following restrictive practices:

- excessive pricing;
- overcharging of interest on outstanding electricity bills;
- very low interest earned on security deposits for electric power reconnections;
- unwarranted demands for security deposits for electric power connections;
- disconnection of electricity supply without adequate notice;
- Frequent use of estimates in billings rather than actual meter readings.

Negotiations undertaken then with ZESA in terms of section 30 of the Competition Act on the discontinuance

of the identified restrictive practices had revealed that most of the complaints against ZESA arose from inadequate communication between the Authority and its customers. It was therefore agreed that ZESA should give the Commission the following Undertaking:

- (a) To improve communication with consumers on matters affecting the supply and distribution of electricity in Zimbabwe, this includes the following:
 - (i) explaining the nature of the billing system;
 - (ii) explaining the necessity for, and the method used to calculate security deposits for reconnections to the power supply system;
 - (iii) explaining disruptions to power supplies;
 - (iv) Making information appearing on consumers' bills more user-friendly, e.g., by adding such information as the cumulative security deposit and interest earned on the security deposit at least once in a year.
- (b) To review the interest earned on the security deposits made by consumers.

The Undertaking was signed by the ZESA management in September 2002, and accepted by the Commission.

The affected stakeholders under the resurfaced complaints and allegations against ZESA's abusive practices were both domestic and corporate industrial and commercial users of electricity. When the new investigation into the abusive practices was commenced in 2009, ZESA was now a commercialized public enterprise called ZESA Holdings (Private) Limited, with three subsidiaries: (i) the Zimbabwe Electricity Transmission and Distribution Company (ZETDC), the power transmission and distribution entity; (ii) ZESA Enterprises (Private) Limited, the enterprising entity that deals with transformers, meters, etc.; and (iii) PowerTel Communications (Private) Limited, an internet services provider. It still enjoyed a statutory monopoly in the distribution of electricity.

The following were the resurfaced complaints and allegations against the practices of ZESA:

- **Tariff Regime:** (i) high electricity tariffs; (ii) tariff rates that were mostly estimated and not consistent with the prevailing business environment; (iii) the introduction of the Power Factor calculations that led to unfair and unsubstantiated tariffs being charged to different manufacturers; (iv) fixed electricity charges that were unfair and fluctuating.
- **Billing System:** (i) power disconnections without sending bills or without prior warning; (ii) irregular meter readings, yet meter reading administration charges continually being billed; (iii) frequent use of estimates, and not actually meter readings, in electricity billings, which in most cases were far higher than what the customer would have consumed; (iv) continued billings when electricity power has been cut off due to faults or other reasons; (v) disregard of the Government's directive that until a proper billing system is put in place, electricity consumers in high density areas should pay US\$30 per month, while those in low density areas should pay US\$40.
- **Load Shedding:** (i) discriminatory treatment of geographical areas in load shedding; and (ii) load limited residents with fixed charges still being required to pay the same amount that they used to pay when there was no load shedding despite the fact that they get half the quantity of electricity that they used to get without shedding.
- **Staff and Maintenance:** (i) High-handed and arrogant ZESA representatives that deal with electricity consumers, both on line by telephone or directly at counter level; (ii) unreasonable demands by ZESA on electricity consumers' own resources in dealing with electricity problems, relating to equipment and items such as transformers, switches, MCBs, aluminium wire, and fuel, that are essential to maintain continuity of service where no refunds are offered, made, or otherwise credited to the consumer; (iii) ZESA forcing consumers to meet the costs of repairing or replacing vandalized transformers and MCBs – in some instances, consumers in high density areas being forced to dig trenches for electrical wires being repaired or replaced by ZESA; (iv) rampant corruption amongst ZESA officials in dealing with faults; and (v) ZESA's

dismal reaction time to faults, with some suburbs going for weeks without electricity because of unattended faults.

- Other Concerns: (i) ZESA's load shedding was leading to damages of residents' electrical appliances when the power is turned on unexpectedly; and (ii) serious losses of work in progress, and damage to equipment, as a result of unplanned power outages.

ZESA through its power transmission and distribution subsidiary, ZETDC, accepted that 95% of the customers' concerns and observations were correct, and explained some of its practices as follows: (i) it charges cost build tariff that is made up of the total of all its expenses (costs associated with power purchase, operations and maintenance, customer service costs, overhead costs, and depreciation of assets) and the return of assets; (ii) its tariffs at US7.5c/kWh are the lowest in the Southern African Development Community (SADC) save for those of the Botswana Power Company (BPC) that are at US7.4c/kWh - the regional median in US12.1c/kWh - and the tariffs are agreed upon after being checked and approved by the sector regulator, the Zimbabwe Electricity Regulatory Commission (ZERC), and ultimately by Cabinet; (iii) it accepted that it had challenges with its billing system in Harare and Bulawayo after its computer system broke down in January 2009, and it was unable to read meters on a monthly basis due to loss of skilled manpower and transport constraints; estimate bills were based on the historical average consumption (units) of the point of supply - the estimate was supposed to be the difference between the last actual reading and the current actual reading; (iv) its billing system stabilised by 30 November 2009 and strict bill quality control checks were put in place and were being maintained; (v) load shedding was inevitable given the shortage of electricity on the domestic market, and even in the whole region - without load shedding, therefore, there would be massive electricity blackouts countrywide; and (vi) certain areas are not load shed for security and public interest reasons, these include central business districts (CBDs) of major towns, and hospitals.

Most of the alleged practices of ZESA were prohibited restrictive practices as defined in terms of section 2(1) of the Competition Act [*Chapter 14:28*] since they constituted unilateral conduct by an enterprise with market power which had the effect of: (i) restricting the distribution of a commodity; (ii) enhanced the price of a commodity; and (iii) prevented the production or distribution of a commodity or service by the most efficient or economical means. Section 28 of the Act gave the Commission the necessary powers of investigating restrictive practices, and the Act in terms of its section 3(2) applied to State enterprises like ZESA.

The Commission found that the practices and conduct of ZESA constituted abuse of monopoly position. ZESA was engaged in the abuse of monopoly power of an exploitative nature by way of charging excessively high prices to consumers who had no alternative source of electric power. In particular, the abuse of monopoly power related to: (i) excessive pricing of electricity through inflated bills and unfair fixed charges; (ii) a billing system that was largely based on estimated consumption of electricity rather than on actual meter readings; (iii) arbitrary electricity power disconnections without notice or prior warning; and (iv) discriminatory load shedding.

The Commission also found that the restrictive practices engaged in by ZESA were contrary to the public interest in terms of section 32(1) of the Competition Act in that the restrictive practices: (i) were adversely affecting the productivity of industrial and commercial undertakings, and thus their viability, thereby seriously reducing their competitiveness and ability to effectively compete against each other; (ii) were against consumer welfare and interests in that they were not only directly affecting the consumers through higher electricity charges and deprivation of electricity power, but also indirectly through a narrower choice of other goods and services at higher prices; and (iii) were further deterring entry of new players into the affected industrial and commercial markets.

The Commission noted that even though ZESA's restrictive practices were not directly restricting competition, they were indirectly restricting competition between various industrial and commercial enterprises to a material degree by reducing the competitive positions of the enterprises.

The Commission further found that the other concerns expressed by the stakeholders over ZESA's conduct and practices had other serious public interest implications. The following were such conduct and practices: (i) the practice of requiring electricity consumers to contribute towards the repair and replacement of damaged or vandalised transformers and MCBs, and of supplying fuel, and digging trenches so that electrical faults can be

rectified, without acknowledgement, which can be abused for corrupt purposes - this put an additional financial burden on consumers, who were not credited with those expenses, leading to unjust enrichment of ZESA; (ii) ZESA's unplanned power outages that led to damage of industrial plant and equipment, and domestic electrical appliances; (iii) ZESA's poor reaction time to faults, and to installations even after being paid for in full by the affected consumers; and (iv) the arrogance and intimidatory manner in which ZESA employees dealt with customers, which included damage to consumers' property in accessing meter boxes.

The Commission's remedial Order in terms of section 31(1) of the Competition Act [Chapter 14:28] was as follows:

WHEREAS the Competition and Tariff Commission (the Commission) conducted a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] (the Act) into allegations of abuse of monopoly by ZESA Holdings (Private) Limited (ZESA) through excessive tariffs, charging of electricity not consumed through use of estimates in billing, unfair load shedding and arbitrary disconnection of electricity supplies to domestic, commercial and industrial customers;

AND WHEREAS the Commission came to the conclusion, *inter alia*, that:

- (i) the allegations against ZESA constituted exploitative restrictive practices that are a manifestation of abuse of monopoly; and
- (ii) that the restrictive practices being engaged in by ZESA are contrary to the public interest in terms of section 32(1) of the Act;

AND WHEREAS ZESA was informed in terms of section 31(5) of the Act of the broad terms of the order that the Commission intended to make to remedy the situation and made representations in the matter to the Commission;

NOW THEREFORE IT IS HEREBY ORDERED –

1. THAT ZESA in arriving at the tariff using their pricing model should adjust for the following:
 - (a) In respect of Zimbabwe Power Company (ZPC), ZESA should use its average normal energy generation capacity, that is, average normal load factor and exclude return on assets and fixed costs of small thermal power stations.
 - (b) In Zimbabwe Electricity Transmission and Distribution Company (ZETDC), ZESA should use a standard and normal transmission and distribution loss factor of energy.
2. THAT ZESA should use actual meter readings when billing its customers subject to the provisions of the Zimbabwe Electricity Supply Authority (Miscellaneous Charges) By-Laws, 1988 published in Statutory Instrument 155 of 1988.
3. THAT with respect to arrears:
 - (a) In respect of metered domestic consumers based in Harare and Bulawayo:
 - (i) The 1st of February 2009 should be used as the starting point of ZESA's new billing period, and that all outstanding charges arising from electricity consumed prior to this date should be written off.
 - (ii) The charges in respect of electricity consumed excluding fixed charges between 1st February 2009 until 30 November 2009 should be in accordance with the Minister of Energy and Power Development's directive, that is, US\$30 per month for domestic consumers in high density areas and US\$40 per month for domestic consumers in low density areas.
 - (iii) All excess payments made on the basis of estimated bills and reconnection fees for those consumers whose power was disconnected after having paid according to the Minister's directive, stated above, should be credited to the affected consumers' accounts.
 - (b) In respect of non-metered domestic consumers countrywide with load limiters, ZESA must reduce the fixed monthly energy charges to 57%, this being the ratio of power availed for use by consumers monthly for the period between 1st February 2009 and November 2009. From 1st December 2009 onwards, the fixed monthly energy charges for such consumers should be based on power availed

taking into account load shedding.

(c) In respect of other consumers, namely; industrial, commercial, mining, farming, schools, universities, government institutions, hospitals and other commercial entities, they should approach ZESA and submit their electricity consumption where readings are available. Where actual readings are not available, and the parties fail to agree on respective consumption levels, a mutually agreed arbitrator should be appointed.

4. THAT ZESA must load shed in a fair and equitable manner and advise customers of the basis/reasons for load shedding.

The Commission also made a number of recommendations to Government on various public interest issues that arose from its investigation, including the following:

- *Privatisation of ZESA's Distribution and Commercial Activities*: that the government should consider opening up the distribution of electricity to competing undertakings, and allow Independent Power Producers (IPPs) to distribute their excess electricity power to consumers in competition with ZETDC.
- *Government Policy on Small Thermal Power Stations*: that the government should come up with an urgent solution to address the future of small thermal power stations at Munyati, Harare and Bulawayo, which used to be operated by the local authorities before being taken over by ZESA but were currently not operating, with the burden of fixed costs being carried by ZESA and passed over to consumers through high electricity tariffs.
- *Rural Electrification Levy*: that the levy, which is being imposed upon ZESA's customers as an additional burden on the already overburdened electricity consumers, should be reduced to 3% to lessen the burden on consumers.

(ii) Investigations into Collusive and Cartel-like Behaviour

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

Collusive arrangements between competitors are some of the unfair business practices that are *per se* prohibited in terms of section 42 of the Competition Act and constitutes a criminal offence. Such arrangements include the distribution of commodities or services at a particular price or within a particular range of prices (price-fixing arrangements), or the sharing of markets for commodities or services, whether the market shares are divided according to geographical area, class of consumer or otherwise (market-sharing arrangements), or the limitation by number or quantity the commodities or services produced or distributed (quantity limitation arrangements). Bid-rigging is also one of the unfair business practices that are *per se* prohibited under the Act. The term 'bid-rigging' is described in the First Schedule to the Act as follows: "entering into or giving effect to an agreement, arrangement or understanding, whether enforceable or not, with another person whereby (a) any of the parties to the agreement, arrangement or understanding undertake not to submit a bid or tender in response to a call or request for bids or tenders, or (b) in response to a call or request for bids or tenders, some or all the parties to the agreement, arrangement or understanding submit bids or tenders that have been arrived at by agreement between themselves".

Cartels are difficult to unearth and investigate by the mere fact that they are illegal activities that are punishable by fines and/or imprisonment. Prosecution of cartels can only succeed if there is concrete proof of explicit agreement between or among cartel members to engage in the practices.

It is therefore not surprising that only a small percentage of restrictive practices cases that were investigated by the Commission during the year under review involved collusive and cartel-like behavior.

The adoption of corporate leniency policies and programs has become increasingly popular in the detecting and prosecution of cartels. Under such policies and programs individuals or corporations are excused from some or all of the penalties for cartel conduct in return for their cooperation in prosecuting a cartel case. Zimbabwe is however not ready to adopt a leniency program for two main reasons. Firstly, the statutory penalties for collusive and cartel-like behavior are not deterrent enough to make it worthwhile for cartel members to participate in a leniency program. Secondly, the Commission has still not demonstrated to the business community that it has the capacity to successfully investigate and prosecute a cartel case.

The biggest cartel case that the Commission investigated during the 2010 year under review was the bread cartel.

Preliminary Investigation into Allegations of Collusive Arrangements in the Bread Making industry

The Commission in September 2010 picked up from the media that the National Bakers Association of Zimbabwe (NBAZ) had agreed with its members to increase the prices of bread by 10%. A preliminary investigation into the matter was accordingly undertaken in terms of section 28 of the Competition Act [Chapter 14:28].

The alleged agreement of the bakers was investigated as ‘collusive arrangements between competitors’, which is a prohibited unfair business practice in terms of section 42 of the Act, and is explained in paragraph 7 of the First Schedule to the Act as follows:

“Being a producer or distributor of any class or type of commodity or service, entering into or giving effect to any agreement, arrangement or understanding, whether enforceable or not, with another person who produces or distributes a commodity or service of the same or a similar class or type –

- (a) to distribute the commodity or service at a particular price or within a particular range of prices;*
- or*
- (b) to share the market for the commodity or service, whether the market shares are divided according to geographical area, class of consumer or otherwise; or*
- (c) to limit, by number or quantity, the commodities or services produced or distributed.”*

The relevant market under investigation was identified as the production and distribution of bread in the whole of Zimbabwe.

An overview of the bread making industry showed that there are more than 120 bakeries in Zimbabwe, most of whom are members of NBAZ. The bakeries in Zimbabwe can be grouped into three categories: (i) large-scale bakeries, who bake large quantities of bread for wholesaling to retail outlets; (ii) in-store bakers, which are in-house bakeries of large supermarkets; and (iii) small and medium-sized bakeries, who bake small quantities of bread in economy loaves. The leading bakeries are Lobels Bread, Bakers Inn, Proton, and Superbake.

Interviews under the investigation were held with NBAZ and some of its members, the Grain Millers Association of Zimbabwe, the Consumer Council of Zimbabwe, and the National Incomes and Pricing Commission. Evidence gathered showed that at its executive meeting held on 24 August 2010, NBAZ had recommended bread price increases of up to 10%, and the general price guidelines that had been agreed upon at that meeting were as follows:

- Standard loaf: US\$0.90 wholesale price, and US\$1.00 retail price

- Superior loaf: US\$1.00 wholesale price, and US\$1.10 retail price

NBAZ members were urged to adhere to the recommended price guidelines, and most of them did. The Association also banned the production of the economy ‘dollar-for-two’ loaves in order to reduce competition with the standard and superior loaves that were being produced by the leading bakeries.

The Commission noted that the preliminary investigation had established a *prima facie* case of the existence of collusive arrangements between competitors in the bread making industry, and agreed to hold a full-scale investigation into the matter.

(iii) Investigations into Misleading Advertising

Misleading advertising is one of the anti-consumer practices that are *per se* prohibited in terms of section 42 of the Competition Act.

The term ‘misleading advertising’ is described in the First Schedule to the Act as follows: “for the purposes or in the course of any trade or business, publishing an advertisement: (a) containing a representation which the publisher knows or ought to know is false or misleading in a material respect; or (b) containing a statement, warranty or guarantee as to the performance, efficacy or length of life of any commodity, which statement, warranty or guarantee the publisher knows or ought to know is not based on an adequate or proper test thereof; or (c) containing a statement, warranty or guarantee that any service is or will be of a particular kind, standard, quality or quantity, or that it is supplied by any particular person or by a person of a particular trade, qualification or skill, which statement, warranty or guarantee the publisher knows or ought to know is untrue”. For the above purposes, “a representation, statement, warranty or guarantee expressed on or attached to an article offered or displayed for sale, or expressed on the wrapper or container of such an article, shall be deemed to have been made in an advertisement”.

The most profound case of misleading advertising that the Commission investigated during the 2010 year under year, which also had intellectual property rights (IPRs) implications, was in the grinding mill manufacturing industry.

Preliminary Investigation into Allegations of Misleading Advertising in the Grinding Mill Manufacturing and Distribution Industry

The Commission in May 2010 reopened the case involving Precision Grinders Engineers’ allegations that Appropriate Technology Africa (ATA) were making and selling inferior grinding mills under the Precision Grinders’ *Hippo Mill* brand and inscribed ‘Precision Grinders Engineers, Zimbabwe’, which it had shelved in March 2008 for lack of concrete evidence on the alleged practices. The case was reopened following representations by the complainants that additional evidence had been found to substantiate the allegations.

The alleged practices of ATA were found to constitute misleading advertising, which is a prohibited unfair business practice in terms of section 42 of the Competition Act [*Chapter 14:28*] that the Commission can investigate in terms of section 28 of the Act. The term ‘misleading advertising’ is explained in paragraph 2 of the First Schedule to the Act as follows:

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

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

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

any commodity, which statement, warranty or guarantee the publisher knows or ought to know is not based on an adequate or proper test thereof; or

(c) containing a statement, warranty or guarantee that any service is or will be of a particular kind, standard, quality or quantity, or that it is supplied by any particular person or by a person of a particular trade, qualification or skill, which statement, warranty or guarantee the publisher knows or ought to know is untrue.

(2) For the purposes of subparagraph (1), a representation, statement, warranty or guarantee expressed on or attached to an article offered or displayed for sale, or expressed on the wrapper or container of such an article, shall be deemed to have been made in an advertisement”.

The following was the additional information and evidence produced by Precision Grinders to substantiate their allegations against ATA:

- Precision Grinders had found the *Hippo Mill* brand grinding mill on display at ATA’s premises on 9 April 2010. The mills were labelled ‘Produced by Precision Grinders Engineers’, and had symbols of a hippopotamus on them, which are symbols used Precision Grinders. The labelling was exactly as Precision Grinders’ but the products were not from Precision Grinders.
- ATA was purchasing side castings with Precision Grinders’ inscriptions from a foundry that used to make the castings for Precision Grinders called Famous Investments. Informers claimed that Famous Investments had 100 such castings meant for ATA.
- Precision Grinders with the help of the police later visited ATA on 14 April 2010 and impounded a grinding mill labelled ‘*Hippo Mill*, Precision Grinders Engineers, Zimbabwe’. Also observed during the same visit was that there were quite a number of the grinding mills, as well as the 100 side castings that were alleged to have been manufactured by Famous Investments.

Stakeholders consulted during the investigation were the respondents (ATA), Apex Corporation (the parent company of the complainant), Famous Investments, the Registrar of Companies Patents and Trademarks, and the Zimbabwe Republic Police.

The Registrar of Companies Patents and Trademarks confirmed that Precision Grinders Engineers has three registered trademarks, two of which are on the *Hippo Mill* brand and one on the *Hippo Mill* brand together with the inscription ‘Precision Grinders Engineers, Zimbabwe’.

The Commission found that by inscribing Precision Grinders’ *Hippo Mill* brand name on its grinding mills, ATA was indeed engaging in misleading advertising as defined in the Competition Act [Chapter 14:28], which is a *per se* prohibited unfair business practices in terms of section 42 of the Act. Being a *per se* prohibited practice, one only has to prove that the practice has been engaged in to declare it illegal without the necessity to prove economic harm.

The alleged practices of ATA however had the possibility of causing economic harm to Precision Grinders in that in misleadingly distributing their allegedly poor quality grinding mills as Precision Grinders’ *Hippo Mill* products, ATA was putting Precision Grinders at a competitive disadvantage in as far as customers’ perceptions on the quality of the products. Precision Grinders’ reputation on the quality and efficiency of services was therefore being put to risk.

The Commission’s investigation had proved that ATA, in distributing their grinding mills as Precision Grinders’ *Hippo Mill* brand of grinding mills, were engaged in misleading advertising, which is a prohibited unfair business practice in terms of the Competition Act. Even though the Zimbabwe Republic Police had confirmed that the case had already been brought before the courts as a breach of the Trademarks Act [Chapter 26:04], the Competition Act had therefore also been breached.

The Commission agreed that the case be referred to the Attorney General for the prosecution in terms of section 42(3) of the Competition Act [Chapter 14:28] of Appropriate Technology Africa (ATA) for engaging in the unfair business practice of misleading advertising.

(b) Mergers and Acquisitions

A total of 14 merger cases were examined by the Commission during the 2010 year under review, of which determinations were made on 9 of them. The term ‘merger’ is defined in terms of section 2(1) of the Competition Act as to have the meaning in Box 3.

Box 3: Definition of ‘Merger’ in the Competition Act

“Merger” means the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person whether that controlling interest is achieved as a result of –

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

The term ‘merger’ as defined in the Act therefore includes acquisitions, and covers both horizontal mergers (i.e., those that take place between two or more firms that are actual or potential competitors, that is, they sell the same products or close substitutes) and vertical mergers (i.e., those that take place between firms at different levels in the chain of production, that is, firms that have actual or potential buyer-seller relationships). Pure conglomerate mergers (i.e., those between firms that neither produce competing products nor are in an actual or potential buyer-seller relationship) are however not covered unless they have horizontal and/or vertical elements.

In terms of section 32(4) of the Competition Act, the Commission is required to regard a merger as contrary to the public interest for the purposes of disallowing it if the merger “has lessened substantially or is likely to lessen substantially the degree of competition in Zimbabwe or any substantial part of Zimbabwe” or “has resulted or is likely to result in a monopoly situation which is or will be contrary to the public interest”.

During the 2010 year under review, the 10 new merger cases were notified to the Commission, with 4 cases carried over from the previous year. Determinations were made on 9 cases, and 5 cases were carried forward to 2011. Figure 3 shows the cases handled during the year under review.

Figure 3: Merger Cases Examined in 2010

Cases Brought Forward from 2009	4
New Cases Notified in 2010	10
Total Cases Examined in 2010	14
Cases Determined in 2010	9
Cases Carried Forward to 2011	5

Of the 9 merger cases that were determined during the year: (i) 6 were approved without any conditions; (ii) 1 had its approval conditions reinforced; (iii) 1 was not challenged; and (iv) 1 was withdrawn.

Table 13 shows the cases that were determined during the year.

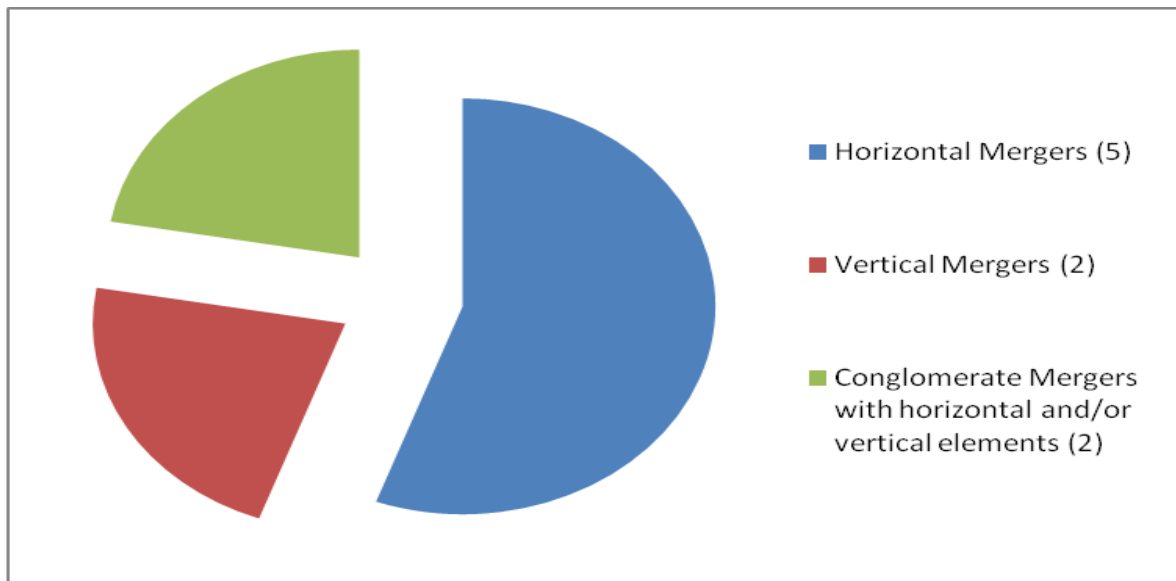
Table 13: Merger Transactions Determined in 2010

Transaction	Type of Merger	Commission Determination
1. Acquisition of Premier Finance Group by African Development Corporation and KMQ Enterprises	Vertical	Commission noted that the transaction was not likely to prevent or lessen competition substantially in the relevant market, and agreed to unconditionally approve the merger.
2. Acquisition of CFX Bank Limited by Interfin Banking Corporation	Horizontal	Commission noted that the merging parties are relatively small in the relevant market, and that the resultant merged entity will therefore not likely lessen competition substantially in that market, and agreed to approve the merger without any conditions.
3. Acquisition of Barclays Bank of Zimbabwe's custody services business by Chartered Standard Bank Zimbabwe Limited	Horizontal	Commission noted that even though the relevant market is highly concentrated, and therefore susceptible to serious competition concerns, the transaction did not increase the concentration since it constituted a mere transfer of business operations between competitors without substantially lessening competition. The merger was therefore approved.
4. Compliance with the Commission's conditions on the approval of the Total Zimbabwe/ Mobil Oil merger	Horizontal	Commission noted that Total Zimbabwe Limited had not fully complied with the conditions imposed on the approval of the merger, and agreed to clarify and reinforce the conditions.
5. Acquisition of Ekodey Enterprises by Dawn Real Estate	Conglomerate with Vertical Elements	Commission noted that the transaction did not raise serious competition concerns in the relevant markets, and agreed to approve the merger.
6. Acquisition of Allied Insurance Company by the Industrial Development Corporation and its Subsidiaries and Associates	Conglomerate with Vertical Elements	Commission noted that the transaction was not likely to substantially prevent or lessen competition in the relevant markets, and agreed to approve the merger in principle pending the completion of the merger notification procedures. The merging parties subsequently decided to withdraw the merger notification.
7. Acquisition of Premier Finance Group by Ecobank Transnational Inc.	Horizontal	Commission noted that the transaction was not likely to substantially lessen competition in the relevant market since the target firm was a very small player in that market, and the acquiring firm was not a player in the market, and agreed to unconditionally approve the

		merger.
8. Acquisition of Freight Forwarders by Stuttafords Removals	Vertical	Commission noted that the transaction, which had been consummated in 2002, did not raise serious competition concerns, and agreed not to challenge the merger. It was however also agreed that the parties to the transaction should be penalized in terms of section 34A(3) of the Competition Act for proceeding to implement the merger without the Commission's approval.
9. Acquisition of Central African Gold by New Dawn Mining Corporation	Horizontal	Commission noted that the transaction did not raise serious competition concerns, and had substantial public interest benefits, and agreed to approve the merger without any conditions.

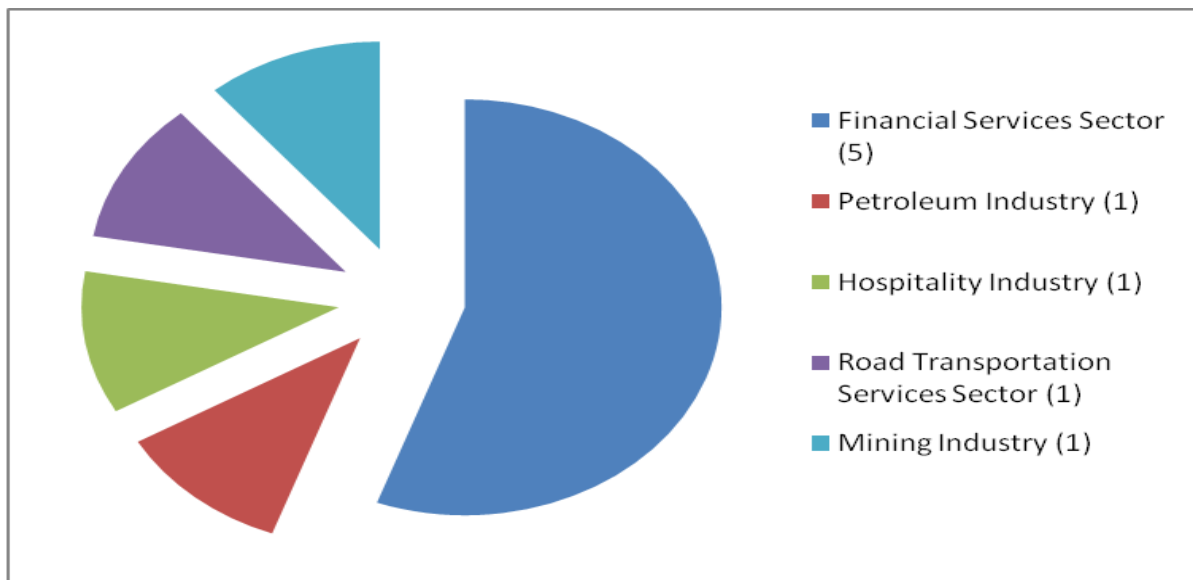
Table 10 also shows that most of the merger cases that were determined during the year were of a horizontal nature, with only a few of a vertical nature and conglomerate nature, as depicted in Graph 4.

Graph 4: Types of Mergers Determined in 2010



The industries and sectors in which the Commission made determinations on mergers and acquisitions are comparatively indicated in Graph 5. By far the most affected sector was the financial services sector.

Graph 5: Merger Determinations by Sector



The most interesting merger case that was determined by the Commission during the year under review that fully tested the Commission’s analytical abilities and coherence with other government economic policies was the acquisition of Central African Gold Company by New Dawn Mining Corporation.

Acquisition of Central African Gold by New Dawn Mining Corporation

The Commission in July 2010 received notification in terms of section 34A of the Competition Act [Chapter 14:28] of the acquisition of Central Africa Gold Plc by New Dawn Mining Corporation. The target firm, Central Africa Gold Plc, was incorporated in terms of the laws of the United Kingdom, where it was based, while the acquiring party, New Dawn Mining Corporation, is incorporated in terms of the laws of Canada. Both parties however had subsidiaries in Zimbabwe, all of which were in gold mining. In Zimbabwe, New Dawn Mining Corporation’s subsidiary, Casmyn Mining, operates Turk Mine, while Central Africa Gold Plc owned Olympus Gold Mines and Falcon Mines.

Even though the primary merging parties were foreign registered companies, and therefore beyond the jurisdiction of the Commission, the Commission nevertheless examined the transaction since it had an effect on Zimbabwe through the parties’ local subsidiaries. The application provisions of the Competition Act provide in terms of section 3 of the Act that “this Act applies to all economic activities within or having an effect within the Republic of Zimbabwe”.

The transaction constituted a merger as defined in terms of section 2(1) of the Act, which defines the term ‘merger’ as to mean:

“[T]he direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person whether that controlling interest is achieved as a result of –

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

The transaction involved New Dawn Mining Corporation acquiring 88.68% of the equity in Central African Gold Plc, thus acquiring a controlling interest in that company as provided for in the definition of the term 'merger' in the Act. The merger was also notifiable in terms of section 34 of the Act since it clearly passed the prescribed merger notification threshold in terms of the combined turnover or assets in Zimbabwe of the merging parties' local subsidiaries.

The relevant market under examination was identified as *gold mining in Zimbabwe*. That market was found to be unconcentrated, with *Herfindahl-Hirschman Index* (HHI) concentration levels of 692 (pre-merger) and 702 (post-merger), and four-firm concentration (CR₄) levels of 45% (pre-merger) and 46% (post-merger). The market shares of the merging parties' subsidiaries in Zimbabwe were small, at 7.26% for Turk Mine and 0.71% for Falcon and Olympus mines. Central African Gold Plc had also been facing serious financial constraints such that its mines in Zimbabwe were dormant and had been placed under care and maintenance.

Besides the merging parties' subsidiaries in Zimbabwe, other stakeholders consulted in the examination of the merger included the Chamber of Mines, the Ministry of Mines and Mining Development, Fidelity Printers and Refiners (Pvt) Limited, and other mining companies (GAT Investments (Pvt) Limited, Metallon Gold Zimbabwe (Pvt) Limited and Duration Gold Zimbabwe (Pvt) Limited). Most of the stakeholders appreciated the transaction. It was noted that the mining sector was facing serious economic challenges and needed recapitalization to restore it.

The Commission noted that even though the transaction was basically a horizontal merger, which is the most harmful of mergers by the fact that the number of competitors in a relevant market are reduced, it was not likely to substantially reduce or lessen competition in the market because of the insignificant market shares of the parties involved. It was also noted that there is little or no market for gold in Zimbabwe since most of that commodity is exported, with the producers not in a position to influence the world market determined prices. It was further noted that the transaction generated a lot of public interest benefits, such as the creation and maintenance of employment, and the revival of the mining industry, with fiscal gains in the form of taxation.

The transaction was therefore approved without any conditions.

4.1.2 OTHER COMPETITION ACTIVITIES

(a) Competition Advocacy and Networking

The Commission through its advocacy work continued with its efforts to ensure coherence between the country's competition policy and other government socio-economic policies. That was done mainly through consultative meetings with relevant economic Ministries in the undertaking of competition investigations, and enforcement of remedial action on restrictive business practices. The Commission's membership of the Steering Committee of the National Economic Consultative Forum (NECF) was also effectively used for that purpose.

Even though the Competition Act [*Chapter 14:28*] does not provide for the conclusion of agreements with sector regulators on concurrent jurisdiction on competition, the Commission commenced negotiations with the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) on the conclusion of a cooperation agreement on the handling and investigation of competition cases in the postal and telecommunications services sector. Discussions were also commenced with Delta Corporation, Schweppes Zimbabwe, and Innscor Africa on the conclusion of competition compliance programmes and agreements.

In recognition that the ultimate objective of the implementation of competition policy and law is consumer welfare and benefit, the Commission strengthened its relations with the Consumer Council of Zimbabwe (CCZ), and consulted the Council in the investigation of competition cases.

International networking on competition matters was nurtured through organizations such as the United Nations Conference on Trade and Development (UNCTAD), the Consumer Unity & Trust Society (CUTS), the Common Market for Eastern and Southern Africa (COMESA), and the Southern Africa Development Community (SADC). Efforts to join the International Competition Network (ICN) to facilitate networking were intensified.

(b) Cooperation with other Competition Authorities

The Commission cooperated with a number of other competition authorities during the year under review. Most of the cooperation was on exchange of information in the investigation of competition cases. In that regard, the Commission cooperated particularly with the Zambia Competition Commission (ZCC), the Competition Commission South Africa, and the Namibia Competition Commission (NaCC). The cooperation with the NaCC extended to giving technical support to that competition authority in the handling of competition cases.

Cooperation with other competition authorities at a regional level involved the Commission providing resource persons at SADC training workshops on competition policy and law.

The Commission also received valuable support from officials of the Federal Trade Commission of the United States of America, and of Autorité de la Concurrence of France, in its efforts to join the ICN.

(c) Competition Workshops and Seminars

During the year under review, the Commission was invited to, and attended, a few international workshops and seminars on competition policy and law, as shown in Table 14. The significantly few number of international competition workshops and seminars attended by the Commission was attributed to the political isolation of Zimbabwe by the major donor countries of such workshops and seminars.

Table 14: Competition Workshops and Seminars Attended in 2010

Period	Workshop/ Seminar	Participant(s)
13-14 April	Competition Conference on Joint Food Project of Egypt, South Africa, and Zambia: Lusaka, Zambia.	A J Kububa
8-12 November	Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices: Geneva, Switzerland.	D Sibanda, A J Kububa, B Chinhengo
25-26 November	Third Meeting of SADC Competition and Consumer Law and Policy Committee, and Regional Workshop on Competition and Consumer Law and Policy for SADC Member States: Johannesburg, South Africa	A J Kububa
29 November – 2 December	UNCTAD Regional Competition Investigation Workshop: Dar-es-Salaam, Tanzania	B Chinhengo, M Gurure

4.2 TARIFFS OPERATIONS

The Commission's tariffs operations are mainly governed and guided by the provisions of Part IVB (investigation of tariff charges and related unfair trade practices). The term 'tariff charge' is defined in terms of that Part to mean "any duty, tax or charge levied by the State in connection with commodities or services imported into or exported from Zimbabwe", while the term 'unfair trade practice' is defined to mean "the dumping of imported commodities", "the granting of a bounty or subsidy with respect to imported commodities" and "any other practice in relation to the importation of commodities or services of the sale of imported commodities or the provision of an imported service where such practice is declared to be unfair (by the Minister of Industry and Commerce)".

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

The Tariffs Division of the Commission investigates, analyses and makes recommendations to the Tariffs Committee of the Board of Commissioners on all trade tariffs cases and issues. In turn, the Commission's decisions on tariffs issues are submitted as recommendations to the Government, through the Ministry of Industry and Commerce.

During the 2010 year under review, the Tariffs Division's staff establishment and strength was as shown in Table 15.

Table 15: Staff Establishment and Strength of the Tariffs Division in 2010

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

With a staff strength of 55% throughout the year, the Tariffs Division was adequately staffed during the year, requiring no additional staff. The manning of the Division during the year is shown in Table 16.

Table 16: Manning of the Tariffs Division in 2010

Name of Officer	Position	Qualification	Duration
Ms. Ellen Ruparanganda	Assistant Director	Economics, and Business Administration	Throughout the Year

Mr. Charles Chipanga	Chief Economist	Economics	
Mrs. C Banda	Senior Economist	Economics	Throughout the Year
Mr. T Katsande	Economist	Economics	Throughout the Year
Mr. T Zengeni	Economist	Economics	Throughout the Year

4.2.1 TARIFFS CASES

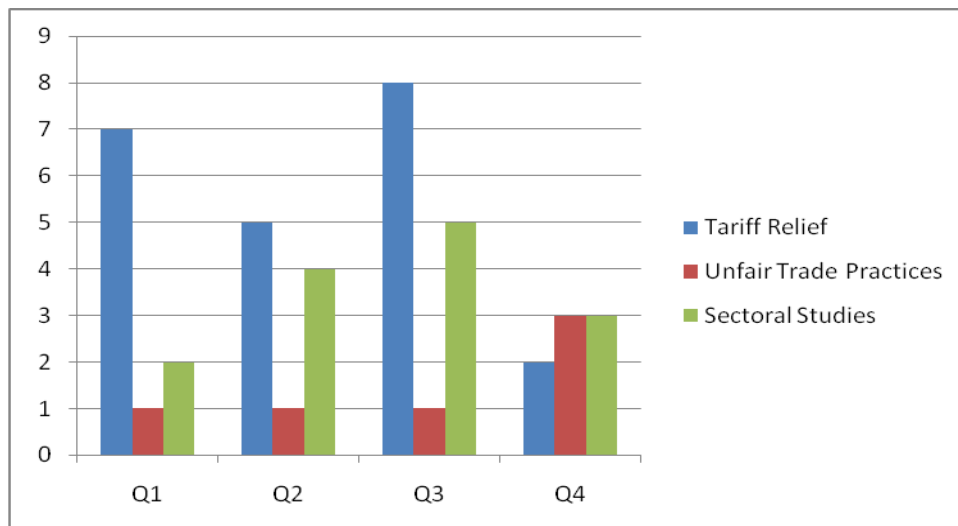
The Commission during the 2010 year under review handled a total of 19 tariffs cases, including sectoral studies, up from the 9 cases handled during the previous year. The number of different tariffs cases handled during the year as compared with those handled during the previous years is shown in Table 17.

Table 17: Number of Tariffs Cases Handled Over the Years

Case Category	1999-2001	2002-2004	2005-2007	2008	2009	2010	Total
Tariff Relief	37	44	12	0	7	10	110
Unfair Trade Practices	0	0	0	0	0	4	4
Sectoral Studies	6	8	0	2	2	5	21
Totals	43	52	12	2	9	19	137

The intensity of tariffs case handling throughout the year is comparatively shown in Graph 6. The graph shows that concentration was made on tariff relief cases (i.e., for import duty tariff reductions or protection), with little activity on cases involving unfair trade practices (i.e., dumping and subsidisation). There was however a marked increase on unfair trade practices activities during the Fourth Quarter of the year following the Tariffs Division's conscious efforts to publicise the trade defence regulations in place.

Graph 6: Tariffs Case Handling Intensity in 2010



In its tariffs operations during the year under review, the Commission was involved not less than 17 times in various sectors and industries, as shown in Table 18. The most involvements were in the

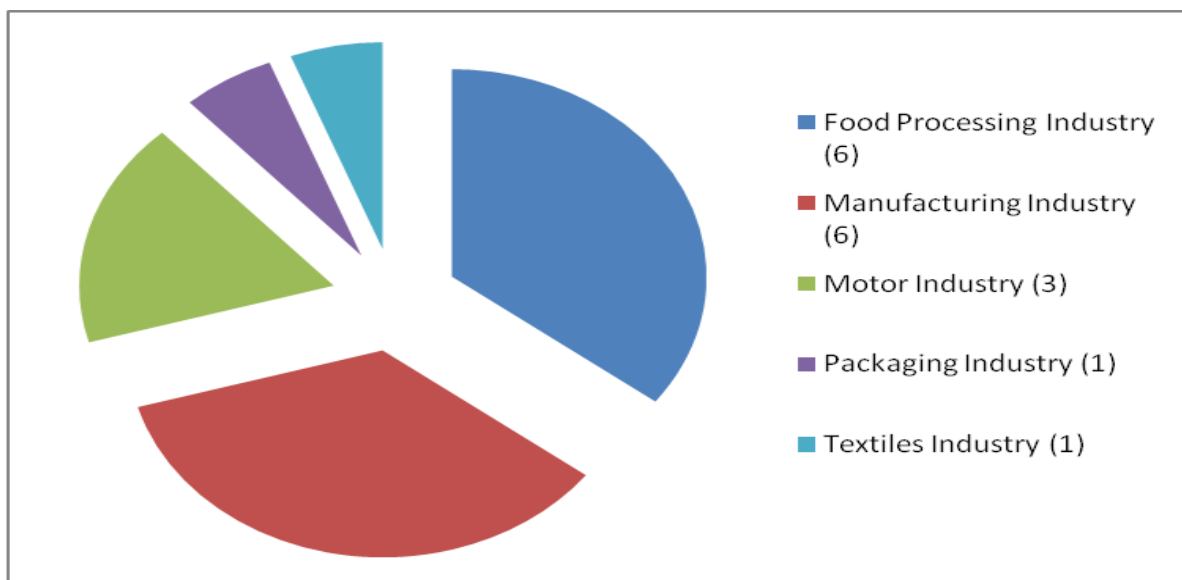
food processing industry and the manufacturing industry (involving the manufacture of products such as agricultural equipment, steel pipes and tubes, batteries, and steel fasteners)

Table 18: Sectoral Tariffs Involvements in 2010

Sector	No. of Engagements			
	<i>Tariff Relief</i>	<i>Unfair Trade Practices</i>	<i>Studies</i>	<i>Total</i>
Food Processing Industry	4	0	2	6
Manufacturing Industry	4	2	0	6
Motor Industry	2	0	1	3
Packaging Industry	1	0	0	1
Textiles Industry	0	0	1	1
Totals	11	2	4	17

The sectoral distribution of tariffs engagements in 2010 is graphically shown in Graph 7.

Graph 7: Sectoral Distribution of Tariffs Engagements in 2010



(a) Tariff Relief

A total of 10 tariff relief cases were investigated by the Commission's Tariffs Division during the 2010 year under review, and the Commission made recommendations on 7 of them, as shown in Figure 4.

Figure 4: Tariff Relief Cases Investigated in 2010

Cases Brought Forward from 2009	3
New Case Applications in 2010	7
Total Cases Investigated in 2010	10
Cases Made Recommended On in 2010	7
Cases Carried Forward to 2011	3

Table 19 shows the cases on which the Commission made recommendations to the Ministry of Industry and Commerce during the year.

Table 19: Tariff Relief Recommendations in 2010

Requesting Company	Relief Sought	Case details and Recommendations
1. Powercell Zimbabwe (Pvt) Limited	Tariff Protection on locally manufactured dry cell batteries	<p>The company requested for increase of import duty on dry cell batteries falling under tariff code 8506.1000 as protection for its locally manufactured batteries.</p> <p>Commission noted that there was immense competition from imported batteries, and agreed to recommend to the Ministry that instead of granting tariff protection on finished goods, tariffs for major raw materials used in the manufacture of batteries be reviewed downwards. The company closed prior to the conclusion of the case.</p>
2. Netrade Investments (Pvt) Limited	Duty Reduction on imported instant noodles	<p>The company requested for duty reduction on the importation of finished Yum Yum noodles for resaling in Zimbabwe.</p> <p>Commission agreed to recommend rejection of the application for reduction of duty on instant noodles from the Far East due to the fact that the applicant did not fit in the definition of 'local industry' as provided for in the Competition Act [<i>Chapter 14:28</i>].</p>
3. Hastt (Pvt) Limited	Tariff Protection on locally manufactured agricultural equipment	<p>The company requested for the reinstatement of import tariffs on agricultural equipment, particularly disc harrows falling under tariff codes 8432.2110 and 8432.2190, that had been removed under Statutory Instruments 15 of 2003 and 16 of 2004.</p> <p>Commission agreed to recommend that protection be granted by the reinstatement of the 5% duty on harrows of less than 30 discs that had been granted duty free status on the basis that there were local manufacturers.</p>
4. Arenel (Pvt) Limited	Duty Reduction on raw materials	<p>The company requested for removal of import duty on the raw materials that it uses in the manufacture of sweets and biscuits. The raw materials in question were white sugar, glucose, palm oil, food flavours, gelatin, skimmed milk, starch, and PVC/BOPP.</p> <p>Commission agreed to recommend duty reduction only on those raw materials that are not produced locally.</p>
5. Colcom Foods (Pvt) Limited	Duty Reduction on imported mechanically	<p>The company requested for a tariff split and duty reduction on mechanically deboned meat (MDM).</p>

	deboned meat (MDM)	Commission agreed to recommend a tariff split to create a new tariff code for MDM at zero tariff rating, as follows: <table border="1"> <thead> <tr> <th>Tariff Code</th> <th>Description</th> <th>Current Duty</th> <th>Recommended Duty</th> </tr> </thead> <tbody> <tr> <td>0207.1410</td> <td>Mechanically deboned meat</td> <td>40%</td> <td>0%</td> </tr> <tr> <td>0207.1490</td> <td>Other</td> <td>40%</td> <td>40%</td> </tr> </tbody> </table>	Tariff Code	Description	Current Duty	Recommended Duty	0207.1410	Mechanically deboned meat	40%	0%	0207.1490	Other	40%	40%												
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0207.1490	Other	40%	40%																							
6. CPL (Pvt) Limited	Duty Reduction on raw materials and Tariff Protection on finished packaging	<p>The company requested for duty reduction on packaging raw materials, and tariff protection on finished packaging materials.</p> <p>Commission agreed to recommend duty reduction on packaging raw materials, as follows:</p> <table border="1"> <thead> <tr> <th>Tariff Code</th> <th>Description</th> <th>Current Duty</th> <th>Recommended Duty</th> </tr> </thead> <tbody> <tr> <td>3921.1290</td> <td>PVC clear (unprinted)</td> <td>15%</td> <td>5%</td> </tr> <tr> <td>4804.3900</td> <td>38gms paper</td> <td>15%</td> <td>5%</td> </tr> <tr> <td>4806.1000</td> <td>PVP paper</td> <td>5%</td> <td>0%</td> </tr> <tr> <td>4811.5190</td> <td>Polycoated paper</td> <td>5%</td> <td>0%</td> </tr> <tr> <td>3920.6200</td> <td>Polyester</td> <td>15%</td> <td>0%</td> </tr> </tbody> </table> <p>The application for tariff protection on finished packaging was however recommended for rejection as this would result in the increase in prices of packaging.</p>	Tariff Code	Description	Current Duty	Recommended Duty	3921.1290	PVC clear (unprinted)	15%	5%	4804.3900	38gms paper	15%	5%	4806.1000	PVP paper	5%	0%	4811.5190	Polycoated paper	5%	0%	3920.6200	Polyester	15%	0%
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3920.6200	Polyester	15%	0%																							
7. Tube and Pipe Industries (Pvt) Limited	Tariff Protection on locally manufactured mild steel pipes and tubes	<p>The company requested for an import duty increase of 20% on the importation of similar steel tubing and pipes that it manufactures.</p> <p>Commission agreed to recommend rejection of the application as the duty rates were ineffective.</p>																								

Tariff relief available to the business community includes waivers of import duty, exemption of duty, duty rebates, duty increases or reductions, and new tariff splits. However, only duty reduction and duty increases (tariff protection) was applied for and considered during the year under review, with duty reduction being the most sought after relief, at 57%.

The Commission's consideration of tariff relief applications during the year showed that requests for duty reduction on raw materials were more favourably considered than those for tariff protection. Tariff protection was generally found, except in exceptionally circumstances involving the viability, and imminent closure of the enterprise, to be inconsistent with the country's trade liberalisation obligations under regional trade agreements, such as under the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC).

Tariff Protection on Dry Cell Batteries

The Commission received a request for tariff adjustment from Powercell (Private) Limited of Kwekwe. The company requested for tariff protection on its locally manufactured dry cell batteries, falling under tariff code 8506.1000, alleging that local traders were either importing the batteries from South African wholesalers or retail chain stores at reduced prices, thereby encouraging the practice of dumping, or were circumventing the payment of import duties. The company used to enjoy 85% share of the local market, which had significantly dropped to 6 – 10% as a result of the unfair trade practices, including the influx of cheap products from China.

Investigations by the Commission's Tariffs Division established the following:

- Powercell could not substantiate the dumping allegations as defined in Statutory Instrument 266 of 2002 (Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002), which provides that the dumped product should have been sold in Zimbabwe at a lower price than in the country of origin.
- Duty circumvention was not deliberate. It is a requirement in this industry to label the product so as to reflect the chemical composition. Customs officers are therefore unable to distinguish between the various battery types chemical compositions at the points of entry. However, it was established that specification certificates could be used to identify the chemical composition of a battery.

Given the above findings, the Commission recommended that import duty be reduced on raw materials used in the manufacture of dry cell batteries, and not to increase duty on imported batteries, to enable the local battery manufacturers to better compete with the imported batteries. Powercell was also advised to approach the Zimbabwe Revenue Authority (ZimRA) regarding the requirement for specification certificates on all dry cell battery imports to eliminate duty circumvention.

(b) Unfair Trade Practices

Four tariff cases involving unfair trade practices were referred to the Commission for investigation during the year under review, all involving dumping and subsidisation, the first such cases referred to the Commission since the enactment in 2002 of the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002 (Statutory Instrument 266 of 2002). The Commission had undertaken an extensive media campaign publicising Statutory Instrument 266 of 2002, as well as the Competition (Safeguards) (Investigation) Regulations, 2006 (Statutory Instrument 217 of 2006).

The allegations of unfair trade practices that were referred to the Commission for investigation were related to dumping in various industries and sectors, such as the vehicle tyre industry, the steel fasteners industry, and the clothing and textiles industry. With the exception of the allegations in the vehicle tyre industry, all the other allegations were withdrawn by the complainants after realisation that they did not constitute dumping as defined in Statutory 266 of 2002).

(c) Sectoral Studies

As shown in Figure 5, 5 sectoral studies aimed at evaluating the impact of tariff reforms on industrial competitiveness were undertaken by the Commission's Tariffs Division during the year under review. Of those, 2 were brought forward from the previous year, while 2 were new studies that were initiated during the year. All the studies were ongoing by the end of the year.

Figure 5: Sectoral Studies Undertaken in 2010

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

The primary purpose of the studies was to assist the Commission in making more informed recommendations to Government on future tariff changes. Industrial sectors that were studied included distressed industries such as textiles industry (blankets), the motor vehicles industry, and the fertilizer industry.

4.2.2 TECHNICAL WORK ON TRADE POLICY ISSUES

The Commission held wide consultations on the proposed tariff phase down schedules for the SADC sensitive products list. Following those consultations, recommendations were made to the Ministry of Industry and Commerce that the phase down programme, which was to be implemented from 2008, be deferred for Zimbabwe such that it commences in January 2012. That was against the background of the need to accord local industry more time to re-equip and recapitalize its plants and machinery in the face of accelerated import competition. The request was granted by SADC and Zimbabwe was given the derogation it had sought.

Following training from the World Trade Organisation (WTO) on the conversion from non-*ad valorem* (specific) duties to *ad valorem* duties, the Commission's Tariffs Division undertook the conversion exercise and submitted the results to the Ministry of Industry and Commerce.

4.2.3 TRADE NEGOTIATIONS WORK

The Commission, represented by its Tariffs Division, participated in not less than 10 regional trade negotiations meetings during the year under review, as shown in Table 20.

Table 20: Trade Negotiations Meetings Attended

Regional Grouping	Meeting	Major Outcomes
Common Market for Eastern and Southern Africa (COMESA)	Committee on the COMESA Customs Union: Harare, Zimbabwe: 10-13 May 2010	The meeting took stock of the progress made by member States towards implementing the provisions of the COMESA Customs Union (CU).
	Twenty-Fifth COMESA Trade and Customs Meeting: Harare, Zimbabwe: 15 – 17 June 2010	The meeting considered progress on the implementation of the COMESA economic integration and work towards the operationalisation of the CU in 2012. It agreed that the study on the additional 5% tariff band to the COMESA Common External Tariff (CET) should be finalized only upon submission of the

		lists of sensitive products by member States.
	COMESA Extraordinary Meeting of the Trade and Customs Committee: Lusaka, Zambia: 9-10 August 2010	The meeting considered studies and assessments made on the possibility of introducing an additional 5% tariff band on the CET. It resolved that further work needed to be done on the studies in order to come up with concrete policy options for the member States concerned.
	COMESA Policy Organs Meetings: Mbabane, Swaziland: 25 August – 1 September 2010	The meetings reviewed the progress made by member States towards the implementation of the CU provisions launched by the Authority in 2009.
	Twenty-Ninth Meeting of COMESA Policy Organs: Lusaka, Zambia: 3 – 6 December 2010	The meetings deliberated on the reports presented by the various Committees and institutions under COMESA. They noted progress and in some instances proffered advice on the execution of some programmes and projects.
Southern Africa Development Community (SADC)	Technical Working Group on SADC Common External Tariff: Johannesburg, South Africa: 28-29 January 2010	The meeting discussed the four proposals for the CET, but failed to agree on the best option for SADC. It was recommended that the issue be discussed at Senior Officials level.
	Trade Facilitation and the Thirty-Ninth Trade Negotiating Forum: Gaborone, Botswana: 12-15 April 2010	The meeting discussed the consolidation of the SADC Free Trade Area (FTA) and implementation of the member States tariff phase down. It noted that some member States were still lagging behind in terms of liberalizing the schedule of commitments.
East and Southern Africa/European Union-Economic Partnership Agreement (ESA/EU-EPA)	ESA-EPA Technical Meeting: Chisamba, Zambia: 28-30 June 2010	The meeting was held to review and strategise on the status and positions of each of the issues under negotiation. On market access, contentious issues discussed were export taxes, substantially all trade, agricultural safeguards and the most-favoured-nation (MFN) clause. It was recommended that technical studies be carried out by the Secretariat for preparation of the next meeting with the European Commission (EC).
	ESA-EPA Preparatory Technical Meeting and Joint ESA/EU-EPA Technical Meetings: Harare, Zimbabwe: 13-15 December 2010	The meetings took stock of the progress made with regards to the consolidated EPA draft text on trade in goods and trade in services. Areas where further consultations were required by

		each party to take the process forward were identified.
COMESA/SADC/EAC Tripartite	Regional Tripartite National Consultative Workshop: Harare, Zimbabwe: 18 November 2010	The workshop discussed issues on how to consolidate Zimbabwe's position on the harmonization and liberalization of the various sectors of the economy in the FTA arrangement.

4.2.4 OTHER TARIFFS-RELATED ACTIVITIES

(a) Consultative Meetings

The Commission's Tariffs Division held consultative meetings with companies in various industries and sectors during the year under review. The primary objective of the meetings, most of which were held following factory visits, was to appreciate the companies' production processes, their requirements and sources of raw materials, and other production inputs, and the challenges they were facing, with the intention of assessing their overall competitiveness in the light of the accelerating pace of trade liberalization. Table 21 shows some of the companies and industries visited and summarises the consultations held.

Table 21: Consultative Meetings Held with the Business Community in 2010

Company/ Industry	Issues Discussed
Windmill (Private) Limited	<p>The company is in the fertilizer manufacturing industry. Most of its raw materials are available locally, and those imported were coming in at very low rates of duty of between 0% and 5%.</p> <p>The major challenge that faced the company remained antiquated equipment, whose production output cannot compete with newer technologies. The other challenges included lack of credit lines, low domestic demand, high utility costs and erratic electricity power supply.</p> <p>The Commission recommended the removal of duties on fertilizer raw materials given the critical role the sector plays in agricultural development.</p>
Agricultural Dealers and Manufacturers (Farmec, Hasst Zimbabwe, and Bain New Holland)	<p>The companies are involved in the importation, distribution and manufacture of agricultural equipment. Steel is the major raw material in the industry, and comprises 70-80% of the finished product. The industry has however been negatively affected by the failure of the local steel manufacturer, ZiscoSteel, to meet its requirements, and has been forced to augment the requirements through imports from South Africa.</p> <p>The industry's major challenges remained antiquated plant and machinery, high road transportation costs, and lack of working capital. Hasst Zimbabwe, in particular, had significantly scaled down its operations to about 5% capacity utilization due to working capital shortages and erratic electricity power supply.</p>

Zimbabwe Sugar Refinery	<p>The company is in the third stage of the sugar production value chain. Its equipment is fairly modern, though there is need to further upgrade certain portions of the plant due to its outdatedness.</p> <p>The company continued to face challenges in securing raw cane sugar, which constituted 90% of its raw materials, from the sugar plantations, Hippo Valley and Triangle Sugar Estates. Resultantly, its capacity utilization fluctuated between 25% to 35%, and the company was contemplating importing raw sugar from Zambia to augment domestic sources.</p> <p>The company employs 399 permanent workers and 60 contract workers.</p> <p>The Commission concluded that the sugar industry has a lot of potential. What is required is to improve the production of raw sugar by Hippo Valley and Triangle Sugar Estates, and to ensure consistent power and water supplies. The Commission also noted that import duties on spare parts and capital equipment were high, and recommended that the duties be reduced to enhance the company's competitiveness.</p>
Blanket Manufacturing Industry (Waverly Blankets (Pvt) Limited, and National Blankets)	<p>Waverly Blankets manufactures blankets, bed sheets, comforters, duvets, and mosquito nets. It employs 600 people, and had a capacity utilization level of 40%. In response to stiff competition from cheap blanket imports, particularly the 2-in-1 type of blankets, the company introduced a new product, the 3-in-1 blanket.</p> <p>National Blankets manufactures blankets, carpet underfelts, and mattress pads. The company purchased state-of-the-art equipment comparable to world standards to be used in the manufacture of blankets that meet the modern taste of consumers. It was however experiencing problems of working capital, unfair competition from imports, and high labour costs. Working capital constraints resulted in the temporary closure of the company during the 2010 year under review.</p> <p>The Commission noted that the sector has a lot of potential, but needed assistance in the form of duty reductions on its imported raw materials.</p>
Poultry Industry	<p>A total of six poultry producers were visited. These included large scale producers, such as Irvine's, Hubbard, Drummonds Chicken, and Strindo Chicken, and small scale producers, particularly the contract growers for the big players.</p> <p>The major challenges faced by the poultry producers included: (i) the threat of GMO chicken from South America selling on the local market at much lower prices than locally produced non-GMO chicken; (ii) the high cost of locally produced non-GMO maize for chicken feed versus GMO maize; (iii) constraints in sourcing hatching eggs that increase the breeding stock size; (iv) the cost of importing breeding stock; and (v) the porosity of border posts allowing the smuggling of GMO chicken into the country.</p> <p>The Commission noted that the poultry industry is highly organized, and can be embarked on by locals. The industry therefore needed to be protected. It thus recommended the reduction of duties for most of the industry's raw materials, such as additives and vitamins.</p>
Haggie Rand Zimbabwe	The company's main product is steel wire, which is used for making various steel

	<p>products, such as bedding springs, fencing wire, barbed wire, nails, chicken mash wire, welding rods, brickforce, and wire ropes. It sources its main raw material (steel rods) from South Africa duty free, though it used to obtain the raw material locally from ZiscoSteel before the closure of that steel company.</p> <p>The company was operating at 30% capacity utilization, and employed 140 people, down from the 240 people it used to employ in 2002. The machines used by the company were old, and most of them needed replacement.</p> <p>The challenges that the company faced included competition from South African imports, electricity power load shedding, lack of working capital, and logistical challenges.</p>
<p>Tube and Pipe Industries</p>	<p>The company manufactures steel tubes and pipes. The major raw material used in the manufacture are steel coils sourced from South Africa, and imported duty free.</p> <p>The company shut down in 2006, and resumed operations in 2009, due to various challenges. It uses antiquated equipment from the 1940s, which needs replacement. It operated at 10% capacity utilization. It used to export some of its products to Zambia, Malawi, Botswana and South Africa. Challenges faced by the company included lack of credit lines and working capital, antiquated equipment, erratic electricity power supply, and high utility costs.</p>
<p>Codchem (Private) Limited</p>	<p>The company is the sole blender of flavours in Zimbabwe, and its main products are food flavours and colourings. It employs 20 people, and its capacity utilization was at 40%. The company however has fairly new equipment.</p> <p>The Commission established that most of the company's raw materials are imported from Europe and South Africa, except for essential citrus oils which are locally manufactured by Mazoe Citrus. The inputs are blended in various proportions to create the desired flavours and colourants. The imported raw materials are charged 5% duty, and the company was comfortable with the duty as it is competitive against imported finished products.</p> <p>The company however does not have the capacity to meet the full range of food flavours required by the food industry. The major challenges confronting the company are lack of credit lines, and erratic electricity power supply.</p>
<p>Modzone Enterprises (Travan Blankets and Irazim Textiles)</p>	<p>Travan Blankets is in the business of manufacturing blankets. The company was facing a number of challenges, such as unfair competition from imports, high labour costs, high cost of electricity, lack of working capital and aged equipment. That resulted in the company failing to compete, and to improve its capacity utilization levels of 20%.</p> <p>The Commission noted that tariff protection for the blanket manufacturing industry was already in place with high import duties of 60%+\$10/kg. That then meant that blankets are being smuggled into the country, and that therefore there is need to intensify anti-smuggling operations. Travan Blankets did not have any complaints on the uniform duty of 5% on raw materials.</p> <p>Irazim Textiles is in the business of manufacturing cotton fabric. The company was also facing a number of challenges, such as high utility costs, cheap imports, high labour costs, and low quality cotton from ginners. Even though the company</p>

	<p>sources 70% of its raw materials (cotton) locally, it was getting low quality cotton from the ginneries who were exporting high quality lint. The company attributed that to the current legislation on cotton lint export, which is only clear on local quantities but silent on the quality. The company is thus incurring additional costs in processing the lint.</p> <p>The Commission also noted that the clothing material industry is adequately protected with duties of around 20%. Irazim Textiles was also comfortable with the low duties on imported raw materials, which averaged 5%.</p>
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(b) Tariffs Mandate Issues

The Commission during the year under review considered a number of issues that affected and impacted on the effective execution of its trade tariffs mandate. The first issue was the very future of its Tariffs Division in the face of increasing trade liberalization arising from trade negotiations with other countries under various fora, such as COMESA, SADC, EPA and WTO. The study undertaken in that regard concluded that while trade liberalization would substantially reduce the Commission’s tariff relief work, it would create the need for trade defence mechanisms, and thus increase in investigations into unfair trade practices, for the protection of local industry against influxes of injurious imports.

To prepare the Commission for the expected increase in unfair trade practices investigations, and to ensure the consideration of only those tariff relief requests that positively contribute towards the country’s industrial development, the Tariffs Division designed appropriate forms for use by applicant companies in applying for such assistance or protection. The forms not only request relevant information and data for the undertaking of the necessary investigations, but are also explanatory on the extent of the assistance or protection given.

The Commission also undertook an awareness campaign through the newspapers on the country’s trade defence mechanisms, as enshrined in the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002, and the Competition (Safeguards) (Investigation) Regulations, 2006. In that regard, 5 newspaper articles were published during the year on relevant topics such as *Safeguards, Dumping, Unfair Trade Practices, Subsidisation, and Tariff Bindings and their Importance*.

A study into the decision making powers of the Commission on tariffs matters was also undertaken. It had been noted in that regard that unlike its decision making powers in its competition operations in which it has full autonomy, the Commission’s decision making powers in its trade tariffs operations are only advisory and recommendatory. As such, the conclusion of those operations were dependent on government’s protracted bureaucratic procedures, which compromised the effective undertaking of the Commission’s statutory functions of providing assistance or protection to local industry. Related to the above, was another study that was undertaken on the harmonization of the Competition Act and the Finance Act on trade tariffs procedural matters. It had been noted that the Ministry of Finance was encroaching on the Commission’s operational territory in the handling of tariff relief applications from the business community.

The findings of the above studies were submitted to the Commission’s Legal & Enforcement Committee for the drafting of the necessary legal instruments.

As part of its effective execution of its trade tariffs mandate, the Commission contributed to the 2010 Mid-Term Fiscal Policy Review and the 2011 National Budget. In that regard, the Commission's recommendations covered: (i) the reduction of duties on some imported household goods of a type not locally manufactured; (ii) the need to adhere to the cascading tariff structure to ensure that raw materials are levied lower duties than finished products to encourage and promote value addition; (iii) the reduction of import duties on raw materials and intermediate goods; and (iv) the strengthening of the country's porous border posts which are seeing a large number of cheap imports being smuggled into the country, thus injuring local industry. The Ministry of Finance adopted some of the recommendations, notably the recommendation on the reduction of duty on some raw materials, and on some imported electrical goods.

(c) Tariffs Advocacy and Networking

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

Close working relations with industry and commerce were also built through the Confederation of Zimbabwe Industries (CZI) and the Zimbabwe National Chamber of Commerce (ZNCC). The Commission's Tariffs Division assumed membership of the relevant Sub-Committees of the CZI and the ZNCC that discuss issues pertaining to challenges facing the business community. Table 22 shows the Commission's attendance at the business associations' Sub-Committee meetings during the year under review.

Table 22: Attendance at CZI and ZNCC Sub-Committee Meetings in 2010

Business Association	Sub-Committee	No. of Meetings Attended
Confederation of Zimbabwe Industries	Economics & Banking	8
Confederation of Zimbabwe Industries	Trade Development & Investment Promotion	2
Zimbabwe National Chamber of Commerce	Trade & Advocacy	3

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

(d) Seminars and Workshops Attended

The Commission's Tariffs Division during the year under review attended and participated at a number of trade-related seminars and workshops, as shown in Table 23. All the seminars and workshops were held in Harare.

Table 23: Trade-Related Seminars and Workshops Attended in 2010

Dates	Seminar/ Workshop	Participant(s)	Lessons Learnt
3 – 4 May	Stakeholder Workshop on the COMESA Customs Union	T Zengeni, and T Katsande	The workshop provided an opportunity for stakeholders to forward their contributions in achieving the comprehensive implementation of the COMESA CU Road Map/
23 June	Master Logframe Workshop on COMESA Strategic Plan 2011-2015	C Chirimumimba, and T Zengeni	The workshop discussed the Master Logframe for COMESA for the 2011-2015 planning cycle with a view to ascertain the extent to which the priorities set out therein are consistent with Zimbabwe's development priorities.
23-25 August	WTO Workshop on Tariff Analysis and Simulations	C Chipanga, C Chirimumimba, T Katsande, and T Zengeni	The workshop trained officials on scheduling and tariff analysis. The training given assisted the officials to undertake the conversion of non- <i>ad valorem</i> to <i>ad valorem</i> duties, an exercise that had been pending for some time.

4.3 CORPORATE AFFAIRS

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

The staff establishment and strength of the Corporate Affairs Department during most of the 2010 year review was as shown in Table 24.

Table 24: Staff Establishment and Strength of the Corporate Affairs Department in 2010

Position	Grade	No. of Posts On Establishment	No. of Posts Filled	Staff Strength
Commission Secretary	E2	1	1	100%
Legal Counsel	D3	1	0	0%
Legal Officer	D2	1	1	100%
Public Relations Officer	D1	1	1	100%
Receptionist	C1	1	1	100%
Totals		5	4	80%

The 80% staff strength of the Corporate Affairs Department during most of the year under review belied the situation on the ground, which was characterized by a severe dearth of personnel to handle the Department's myriad functions. All the Department's sections suffered severe personnel constraints during the year.

The manning of the Department during the year is shown in Table 25.

Table 25: Manning of the Corporate Affairs Department in 2010

Name of Officer	Position	Qualification	Duration
Mrs Mary Gurure	Commission Secretary	Law	Throughout the Year
Mr Tafadzwa Madzigira	Legal Officer	Law	Resigned August 2010
Ms Farima Chikosi	Public Relations Officer	Public Relations	Throughout the Year
Miss P Hove	Receptionist	Receptionist Certificate	Throughout the Year

4.3.1 LEGAL SERVICES

During the 2010 year under review, the Department gave legal advice to the Commission's other Divisions and Department, as summarized in Table 26.

Table 26: Legal Advice Given in 2010

Division/ Department	Legal Advice Given
Competition Division	<ul style="list-style-type: none"> • Competition functions of the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) under the Postal and Telecommunications Act [<i>Chapter 12:05</i>]. • The provisions of the Medical Services Act [<i>Chapter 15:13</i>], as read with the Medical Services (Medical Aid Societies) Regulations, 2000 (Statutory Instrument 330 of 2000), in relation to the <i>Cimas Medical Aid Society Kidney Dialysis Case</i>. • The provisions of the Electricity Act [<i>Chapter 13:19</i>] in relation to the jurisdiction of the Zimbabwe Electricity Regulatory Commission (ZERC) over monopolistic practices of ZESA Holdings (Private) Limited.
Tariffs Division	<ul style="list-style-type: none"> • Decision making powers of the Commission on tariffs matters under the Competition Act [<i>Chapter 14:28</i>]. • Eligibility of tariff relief assistance in relation to Duly Motors' application for duty reduction on importation of bantam trucks.
Finance & Administration Department	<ul style="list-style-type: none"> • Commission contracts with service providers in relation with the Procurement Act [<i>Chapter 22:14</i>], as read with the Procurement Regulations, 2002 (Statutory Instrument 171 of 2002). • Service contract on the supply and installation of the Commission's local area network (LAN) by Unified Africa Technologies (Private) Limited.

	<ul style="list-style-type: none"> • Service contract on the installation of broadband internet in the Commission by Africa-On-Line Limited.
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The Department also drafted and submitted detailed instructing briefs to the Commission’s external lawyers, Dube, Manikai & Hwacha Legal Practitioners, on the following legal matters that were before the law courts: (i) Cimas Medical Aid Society’s application to the High Court, and subsequent appeal to the Supreme Court, for revocation of the Commission’s prohibition order on kidney dialysis claims; and (ii) opposition to ZESA Holdings’ application to the Administrative Court for condonation for late filing of an appeal against the Commission’s order against ZESA’s abuse of monopoly position in the electricity production and distribution services sector.

Legal drafting by the Department during the year under review was on various issues, such as *Gazette* notices on full-scale investigations, remedial orders on restrictive business practices, and prohibition orders, as shown in Table 27.

Table 27: Legal Drafting in 2010

Full-Scale Investigation	Remedial Orders	Prohibition Orders
<p><i>Gazette</i> notices announcing the commencement in terms of section 28 of the Competition Act [<i>Chapter 14:28</i>] of the following investigations:</p> <ul style="list-style-type: none"> • allegations of abuse of monopoly position in the electricity production and distribution services sector; • allegations of abuse of dominant position in the music recording industry; and • allegations of abuse of monopoly position in the fixed line telephone services sector. 	<p>Remedial order in terms of section 31(1) of the Competition Act [<i>Chapter 14:28</i>] against ZESA’s abuse of monopoly position in the electricity production and distribution services sector.</p>	<p>Prohibition order in terms of section 29(1) of the Competition Act [<i>Chapter 14:28</i>] prohibiting or staying Cimas Medical Aid Society’s restrictive practice of refusing to meet claims by its members for kidney dialysis treatment at health centres other than those owned or run by Cimas.</p>

4.3.2 BOARD SECRETARIAL SERVICES

The Corporate Affairs Department organized and provided the necessary secretarial services to all the 21 Commission meetings that were held during the year under review (i.e., Ordinary and Special meetings of the Board of Commissioners, and meetings of the various Board committees). It also organized 4 Stakeholder/Public Hearings meetings for the Board of Commissioners on competition cases, as well as 3 Disciplinary meetings at Board level involving members of management.

4.3.3 CORPORATE GOVERNANCE

The Department, in liaison with the Director’s Office and the Finance & Administration Department, organized and coordinated the holding of the Commission’s Strategic Planning Workshop that was

held in Kadoma in January 2010. The workshop produced the Three-Year Strategic Plan: 2010-2012, which guided the Commission’s activities during the year under review.

Other corporate governance events in the form of workshops and seminars that were organized by the Department during the year are shown in Table 28.

Table 28: Corporate Government Workshops and Seminars in 2010

Dates	Workshop/ Seminar	Participant(s)
21-22 July 2010	Company Secretaries Workshop on Corporate Governance	M Gurure, E Rindayi, T Madzingira
16-17 August 2010	Workshop on Fighting Fraud and Corruption	B Chinhengo, M Gurure, E Rindayi
2 September 2010	Workshop for Directors on Board Practices and Board Procedures	M Gurure
3 November 2010	Seminar on Practical Understanding of Quality Governance	A J Kububa, M Gurure, E Rindayi

4.3.4 PROMOTION AND PUBLIC RELATIONS

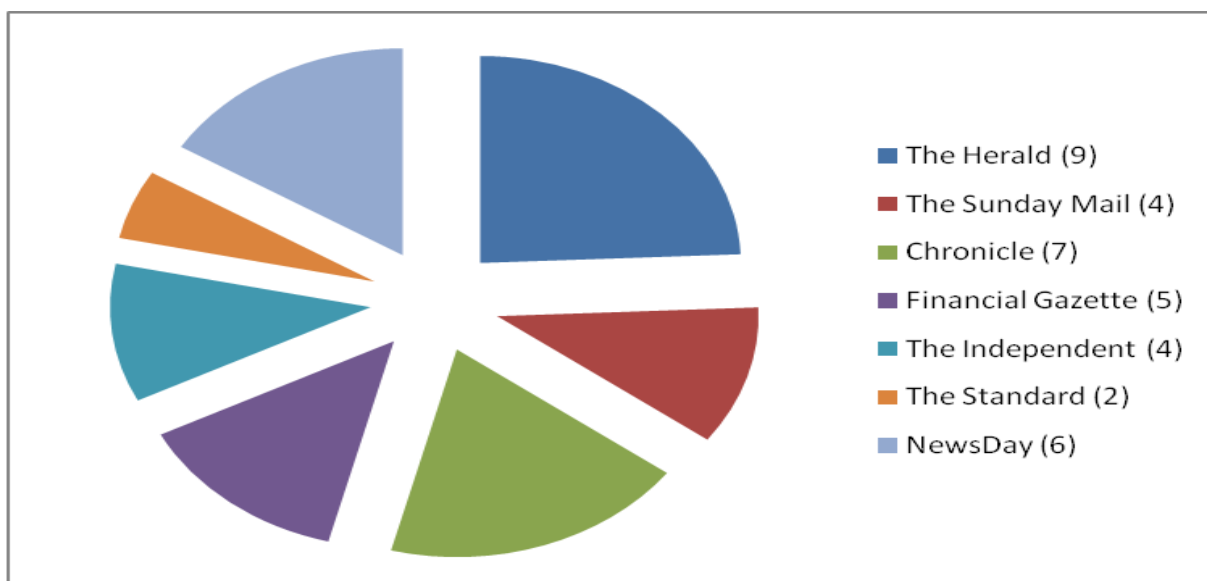
Work begun during the year under review to re-formulate the Commission’s public relations plans to make the organization more visible to its stakeholders in both the private and public sectors of the economy. The work was continuing by the end of the year, but the Corporate Affairs Department was actively involved in a number of promotion activities throughout the year.

The Department organized and coordinated the Commission’s active participation at the Zimbabwe International Trade Fair (ZITF), that was held in Bulawayo during the month of April 2010, and at the Harare Agricultural Show, that was held in August 2010. The Commission’s stands at both events were very popular with both the business community and the general public.

The Commission’s full-scale investigation into allegations of monopolization in the electricity production and distribution services sector, and the resultant remedial order against ZESA Holdings’ abuse of monopoly position, gave the Commission the most publicity during the year. To maximize that exposure, the Corporate Affairs Departments organized a Press Conference on the announcement of the Commission’s order against ZESA, and arranged the Chairman’s appearance on the national television on the same issue.

The operations and activities of the Commission were reported in not less than 37 newspaper articles throughout the year, an average of 3 reports per month. The most reports were in the business section of *The Herald* daily newspaper, followed by the *Chronicle*, *NewsDay*, the *Financial Gazette*, *The Sunday Mail* and the *Zimbabwe Independent*, and *The Standard*, in that order. Graph 8 shows the reporting on the Commission in the various newspapers during the year.

Graph 8: Reporting on Commission in Newspapers in 2010



While most of the newspaper reports were on the *ZESA Monopoly Case*, a number were on the Commission's investigations into other competition concerns, such as the bread price-fixing cartel, the *Cimas Kidney Dialysis Case*, TelOne's alleged abuse of monopoly position in the fixed line telephone services sector, and the *CFX/Interfin Merger*. Others were feature articles on the Commission's general implementation of the country's competition policy and law.

The Director was also interviewed not less than five times by Zimbabwe Television on various aspects of the Commission's operations and activities, and most of those interviews were also broadcasted on the radio.

Publicity on the Commission's trade tariffs activities was effected through newspaper advertisements on trade defence mechanisms (dumping, subsidization, Safeguards, and tariff bindings) which appeared in *The Herald* daily newspaper during the months of September and October 2010.

4.4 ADMINISTRATION AND FINANCE

The provision of administrative and financial support services to the Commission's operational Divisions and Department is the responsibility of the Finance & Administration Department. In particular, the Department has the crucial role of assisting the Director in the performance of his statutory functions in terms of section 17 of the Competition Act [*Chapter 14:28*] of "administering the Commission's affairs, funds and property". The numerous administrative support functions of the Department include human resources management, maintenance and effective allocation of physical assets, including office equipment, and control and economic utilization of financial resources.

The staff establishment and strength of the Finance & Administration Department during most of the 2010 year review was as shown in Table 29.

Table 29: Staff Establishment and Strength of the Finance & Administration Department in 2010

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

Even though the Department was one of the better staffed units during the year under year, the staffing gaps comprised the provision of administrative services. Table 30 shows the manning of the Department during the year.

Table 30: Manning of the Finance & Administration Department in 2010

Name of Officer	Position	Qualification/Experience	Duration
Mrs. Patience Hoko	Manager	n/k	Resigned June 2010
Mr. Edgar Rindayi	Accountant	Accounts	Throughout the Year
Mr. S Nyatsungo	Administration Officer	Psychology	Throughout the Year
Mrs. R Munyanyiwa	Human Resources Officer	Personnel Management	Throughout the Year
Mr. Daniel Mwatsveruka	Sub-Accountant	Accounts	Throughout the Year
Mr. Lazarus Chiwara	Sub-Accountant	Mathematics	Throughout the Year
Mrs. Prisca Chikotosa	Personal Assistant	Bookkeeper and Secretarial	Throughout the Year
Miss Angeline Malunga	Private Secretary	Secretarial	Throughout the Year
Mr. N Jaure	Accounts Officer	Accounts	Throughout the Year
Mrs. S Mabhuri	Registry Officer	Records Management	Throughout the Year
Mr. S Murungweni	Driver/Messenger	Driver's Licence	Joined May 2010
Mr. T Chivinge	Office Orderly	'O' Levels	Throughout the Year

4.4.1 ADMINISTRATION

(a) Human Resources

Staff turnover during the year under review was relatively low when compared with previous years. The Commission only lost two employees during the year from resignations, and gained one employee from recruitment. Only one resignation was for 'greener pastures', with the other following disciplinary proceedings. The resignations were in the Finance & Administration Department, and the Corporate Affairs Department, while the recruitment was in the Finance & Administration Department.

While the low staff turnover during the year was largely attributed to the economic situation in the country that depressed the employment market, measures that were put in place by the Commission to retain staff also assisted. The measures were mostly staff benefits of a non-monetary nature, such as educational assistance, grocery allowances, and subsidized meals.

The Commission's staff establishment during the year was however not as strong as it should have been to sustain its operations. Table 31 shows the staff establishment by Divisions/Departments as per the end of the year.

Table 31: Staff Establishment By Divisions/Departments As At 31 December 2010

Division/ Department	Positions	No. of Posts On Establishment	No. of Posts Filled
Director's Office	Director, Internal Auditor	2	1
Tariffs Division	Assistant Director, Chief Economist, Senior Economists, Economists	9	5
Competition Division	Assistant Director, Chief Economist, Senior Economists, Economists, Law Officers, Investigators	18	5
Corporate Affairs Department	Commission Secretary, Legal Counsel, Legal Officers, Public Relations Officer, Receptionist	5	4
Finance & Administration Department	Manager, Accountant, Administration Officer, Human Resources Officer, Sub-Accountants, Private Secretaries, Accounts Officers, Administrative Assistant, Registry Officer, Driver/Messengers, Office Orderly	16	11
Totals		50	25

With 25 positions on its staff establishment of 50 filled, the Commission operated at 50% of the establishment during most of the year under review. The situation was aggravated by the fact that two of the Commission's senior employees were hospitalized for considerable lengths of time during the year. The Director was hospitalized, and was on sick leave from May to July 2010, while the Commission Secretary was also hospitalized, and was on sick leave from December 2010 to February 2011.

(b) Staff Training and Development

Staff training and development was undertaken throughout the year under review as a conscious policy of the Commission. While most of the training was on-the-job, a number was done through formal training courses. Besides specialized training in the fields of competition and trade tariffs, formal training courses attended in the general fields are shown in Table 32.

Table 32: General Training Courses Attended in 2010

Staff Trained	Month of Training	Training Course	Purpose of Training
T Madzingira	April 2010	Advanced Meetings and Minute-Taking	To equip trainees in speedy minute taking
S Mabhuri	May 2010	Basic Records Management and Information Science	To keep trainees up to date with recent developments in records management

The Commission also revived its staff educational loan scheme during the year under review. The first beneficiary was Mr Isaac Tausha, an Economist in the Competition Division, who commenced a Master of Science degree programme in Economics at the University of Zimbabwe in September 2010.

4.4.2 FINANCE

(a) Funding

The Commission's sources of funding during the 2010 year under review, as compared with those of the previous year, are shown in Table 33. Following the introduction of the Multicurrency system in February 2009, the Commission continued to use the United States Dollar as its operational and reporting currency.

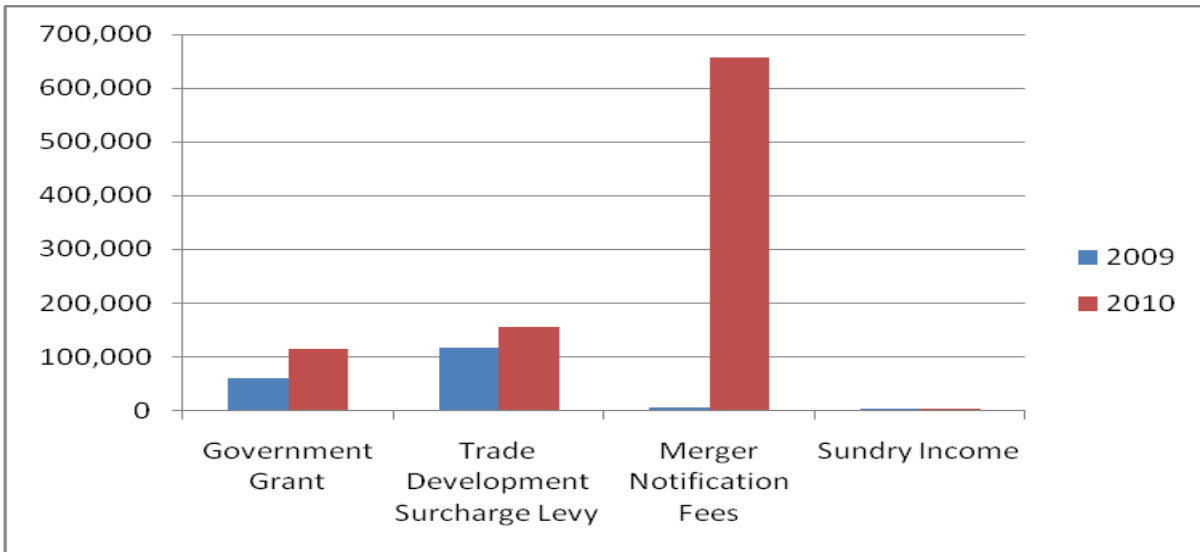
Table 33: Sources of Commission Funding in 2010

Source of Funds	2009 (US\$)	2010 (US\$)
Government Grant	60 371	114 154
Trade Development Surcharge Levy	117 245	154 986
Merger Notification Fees	5 644	657 620
Sundry Income	187	1 211
Totals	183 447	927 971

The year 2010 progressed relatively well for the Commission in terms of revenue generation, despite the liquidity problems in the economy, and the slow pace at which the economy was growing. The Commission's revenue during the year exceeded its previous year's revenue by almost 406%. Merger notification fees, at US\$657 620, overtook trade development surcharge levies as the highest source of income for the Commission. While the government grant increased by about 90% over the 2009 receipts, that source of funds fell to the third place in funding prominence, indicating the severe financial constraints that the Government was facing in funding the operations of State enterprises and parastatals. The Government grant should ideally be the Commission's major source of funding, being a non-commercial Statutory Body with predominantly regulatory and advisory functions.

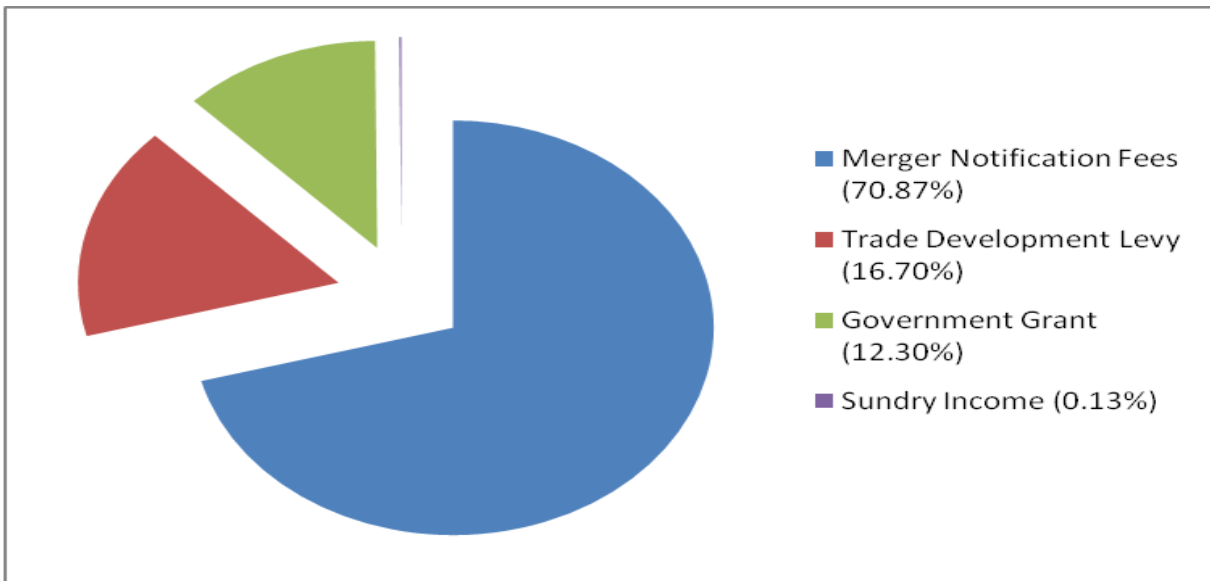
Graph 9 comparatively shows the Commission's funding sources in 2009 and 2010.

Graph 9: Comparative Funding Sources in 2009 and 2010



Graph 10 graphically shows the Commission’s sources of funding during the 2010 year under review.

Graph 10: Commission’s Sources of Funding in 2010



(b) Internal Audit

The Commission requested its parent Ministry of Industry and Commerce’s internal audit team to undertake an investigation into the handling of cash in the Commission. While the audit did not find any major fraud in the Commission, it unearthed some deficiencies in the organisation’s internal controls that might have led to some misappropriation of funds. The Accountant was named as a possible suspect of the misappropriations, and the necessary disciplinary proceedings were accordingly initiated. The Disciplinary Committee however absolved the Accountant of any wrongdoing.

The disciplinary proceedings that arose from the internal audit however unearthed gross incompetence on the part of the Manager (Finance & Administration), and also that she had forged her academic qualifications on joining the Commission. The Manager tendered her resignation from the Commission while her case was still being considered by the Disciplinary Committee.

(c) Financial Performance

The Commission's financial performance during the 2010 year under review is as reflected in its audited financial statements as at 31 December 2010, which are attached as an integral part of this Report.

The highlights of the financial statements are the Auditors' opinion 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 31 December 2010, and of the results of its operations, and its cash flows, for the 2010 year.

With total annual income of US\$934 015 (including interest received of US\$6 044, and sundry income of US\$1 211) and administrative expenses totalling US\$483 070, the Commission had a surplus of US\$450 945 for the 2010 year under review, opposed to the deficit of US\$54 961 that it recorded during the previous financial year.

4.5 CONSTRAINTS AND OUTLOOK

As in previous years, resource constraints were the major impediments to the Commission's operations during the 2010 year under review. All the Commission's Divisions and Departments operated without adequate computer equipment during the first seven months of the year. That adversely affected research and analytical work on competition and tariffs cases, as well as report writing and production.

The Commission also operated throughout the year with a depleted and aged motor vehicle fleet of only five vehicles, while it required a fleet double that number for the effective undertaking of its investigations in all the major centres of the country.

The Commission's operational Divisions operated with a dearth of research and analytical skills, which greatly constrained their work. The Tariffs Division, in particular, needed such skills for its new focus on trade instruments. The required training in that area is not found locally, and can only be offered by a few international organizations, such as the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD). Financial constraints also prevented the Division from attending and participating at two key trade negotiations meetings during the year under review.

The Corporate Affairs Department was particularly constrained by being thinly staffed. With only one officer in each of its key sections of legal services and public relations, the Department's work in those respective areas was seriously hampered whenever the officers were absent on leave, or on specific assignments such as manning the Commission's stands at fairs and exhibitions or attending stakeholder hearings.

International cooperation and networking is the backbone of the Commission's operations. Over the years, including the year under review, that cooperation and networking had been hampered by Zimbabwe's political isolation by Western countries which control most of the international

organizations that the Commission should cooperate with. The Competition Division has been the most affected, and has missed out on cooperation on best practices in the field of competition with organizations such as the Organisation for Economic Co-operation and Development (OECD), the International Competition Network (ICN) and the European Commission (EC), even though the Competition Law and Consumer Policies Branch of UNCTAD and the CUTS Centre for International Trade Economics & Environment continued to cooperate with the Commission.

The outlook for 2011 however looks brighter. The improvement in the Commission’s financial position, which was evidenced by a surplus of US\$450 945 during the year under review, should lead to the easing of the resource constraints that besieged its operations during 2010. Being a Statutory Body with the provision of public goods as its primary objective, the Commission should not accumulate huge financial resources while operating with inadequate physical resources. The Commission’s relations with friendly organizations like UNCTAD and CUTS are continually being strengthened, so has its relations with the Secretariats of COMESA and SADC. The ICN was also positively responding to the Commission’s overtures to join its membership.

4.6 PERFORMANCE AGAINST TARGETS

The Commission in its Three-Year Strategic Plan: 2010-2012 set for itself definite performance targets. The performance against targets during the 2010 year under review was as shown below:

Key Performance Area	Activities, Targets and Key Performance Indicators	Performance Results	Reason for Variance
Competition Division			
Promotion and encouragement of competition in all sectors of the economy	Development of competition advocacy programmes and plans: <ul style="list-style-type: none"> conducting competition awareness campaigns, throughout the year; holding stakeholder workshops on current competition issues, throughout the year. Expected increase in business and public awareness of the importance of competition.	The Stakeholder/ Public Hearings held by the Commission on competition concerns in various industries and sectors, such as the electricity services sector, the petroleum industry, and the health delivery services sector, were also used for competition advocacy purposes. In that regard, the stakeholders who attended and participated at the Hearings included relevant Government Ministries, sector regulators, and business and consumer associations.	Limited financial resources prevented the organization of stakeholder workshops that were specifically devoted to competition advocacy. The organization of stakeholder workshops on the socio-economic effects of pricing of public utilities, based on the Commission’s competition investigations in the utilities sector, was however in progress by the end of the year under review.
	Negotiating and concluding competition compliance programmes and agreements with large and conglomerate companies, during the First Quarter of the year, and thereafter throughout the year,	Negotiations on the conclusion of competition compliance programmes and agreements were commenced with Schweppes Zimbabwe, Delta Corporation, and	Negotiations on competition compliance programmes have proved to be protracted, mainly because they may be perceived as admittance to engagement in anti-competitive practices.

	with expected reduction of anti-competitive practices in the economy.	Innskor Africa, and were ongoing by the end of the year under review.	
	<p>Concluding cooperation agreements with sector regulatory authorities:</p> <ul style="list-style-type: none"> identifying sector regulators with competition functions, by the end of the Second Quarter of the year; negotiating cooperation agreements with the identified sector regulators, during the Second Half of the year. <p>Expected reduction in jurisdictional conflicts between the Commission and sector regulators on competition matters, and increased cooperation with sector regulators.</p>	<p>Sector regulators with competition functions that were identified for conclusion of cooperation agreements with the Commission included the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) and the Zimbabwe Electricity Regulatory Commission (ZERC).</p> <p>Discussions with POTRAZ on the conclusion of a cooperation agreements were at an advanced stage by the end of the year under review. ZERC turned down the Commission's approaches to conclude such an agreement.</p>	The Commission's unsuccessful approaches to ZERC on the conclusion of a cooperation agreement highlighted the deep-seated conflicts on jurisdiction over competition matters in regulated sectors, which the Commission is aiming at addressing.
	<p>Undertaking outreach programmes in the small and medium enterprises (SMEs) sector:</p> <ul style="list-style-type: none"> identifying the relevant SME sectors, by the Third Quarter of the year; holding workshops on competition policy and law for the identified SMEs, during the Fourth Quarter of the year. <p>Expected increase in SME awareness of the Commission's competition functions and activities.</p>	<p>The identification of relevant SME sectors to be targeted for outreach programmes was still pending by the end of the year under review. However, SMEs are now found in virtually all the economic sectors because of the downturn in the economy.</p> <p>Donor assistance on the holding of SME workshops was sought from the World Bank with little success.</p>	The Commission's concentration on high profile competition cases involving large enterprises during the year under review left very little time to work on the SMEs.
Investigation and control of restrictive business practices (anti-competitive agreements, and abuse of dominant position (monopolization)).	Identifying and monitoring sectors that are prone to anti-competitive practices, and investigating such sectors, with expected reduction in anti-competitive practices.	<p>Sectors that were identified as being prone to anti-competitive practices were public utilities (electricity, water, telecommunications, and municipal rates and levies), food processing, beverages, and textiles.</p> <p>Competition investigations into all the identified sectors and industries were commenced.</p>	

	<p>Investigating anti-competitive practices, and remedying such practices:</p> <ul style="list-style-type: none"> identifying prevalent anti-competitive practices in various industries and sectors for investigating, with expected increase in investigation of competition cases involving RBPs; taking the necessary corrective measures, with expected reduced anti-competition practices. 	<p>Monopolisation and collusive and cartel-like behavior were identified as the most prevalent anti-competitive practices in various industries and sectors that were investigated by the Commission. Misleading advertising was also investigated.</p> <p>Remedial action taken by the Commission included cease and desist orders, and restitution.</p>	
	<p>Defining service quality standards for anti-competitive practices in line with regional and international trends, and conducting service delivery audits on the established time taken in handling competition cases:</p> <ul style="list-style-type: none"> consultations with other competition authorities in the region and worldwide, by the end of the First Quarter of the year; establishing and implementing best practices in the investigation and conclusion of competition cases involving RBPs, by the Second Quarter of the year, and thereafter throughout the year. <p>Expected reduction in time taken in investigating restrictive and unfair business practices, and increased quality of competition investigation reports.</p>	<p>Other competition authorities that were consulted included the Zambian Competition Commission, the Competition Commission South Africa, the Monopolies and Prices Commission of Kenya, the Namibian Competition Commission and the Competition Commission of Singapore.</p> <p>Information gathered was mostly on the regulated times on handling of competition cases, which was being used by the end of the year under review to formulate the Commission's own regulations.</p>	<p>Consultations with other competition authorities, particularly those from outside the region, proved somewhat difficult during the year because of the Commission's non-membership of relevant international organizations like the International Competition Network (ICN).</p>
<p>Regulation of mergers and acquisitions</p>	<p>Developing a market intelligence system on the identification of imminent mergers and acquisitions, by the First Quarter of the year.</p> <p>Expected increased merger notifications</p>	<p>Arrangements were made with the Zimbabwe Stock Exchange (ZSE) and the Registrar of Companies on the identification of mergers and acquisitions in the economy. A 'Merger Watch' unit was also established in the Competition Division to pick intelligence from the market on companies discussing mergers and acquisitions.</p> <p>A number of merger</p>	

		notifications during the year directly arose from the above efforts.	
	Defining service quality standards on merger control in line with regional and international trends, through consultations with other competition authorities in the region and worldwide, with expected increased quality of merger examination reports submitted within the stipulated 90 days of notification for standard mergers and 120 days for complex mergers.	Consultations were held with the competition authorities of South Africa, Zambia and Namibia on service quality standards on merger control. The results of the consultations were being used by the end of the year under review to compare with the Commission's own Merger Control Guidelines.	
Research and study into competition issues	<p>Undertaking research and study into competition in priority sectors of the economy:</p> <ul style="list-style-type: none"> identifying strategic industries and sectors needing study, during the First Quarter of the year; carrying out studies on competition in the identified industries and sectors, throughout the year. <p>Expected increased exposure of anti-competitive practices in the economy.</p>	<p>Sectors that were identified for competition study included the pharmaceutical services sector, the clothing and textiles industry, the transport industry, the financial services sector, the food and drink industry, and the telecommunications services sector.</p> <p>Studies into the above sectors were commenced but were shelved during the year under review.</p>	The competition studies were shelved due to under-staffing of the Competition Division, and lack of training and expertise in the undertaking of research studies in the Division.
Tariffs Division			
Provision of assistance and protection to local industry using the trade tariffs system	<p>Identification of opportunities for intervention in local industry:</p> <ul style="list-style-type: none"> undertaking factory visits to identify areas requiring intervention, on a Quarterly basis with at least 3 companies visited per Quarter; attending meetings and workshops of business associations, throughout the year; drafting and publishing newspaper articles on trade tariffs issues, on a Quarterly basis, with at least one article published per Quarter. 	<p>The Tariffs Division during the year under review visited not less than 15 companies in various industries (such as the fertilizer industry, the agricultural implements manufacturing industry, the poultry industry, and the blanket manufacturing industry). The findings from the visits were used as inputs into tariff relief cases, sectoral studies, and trade negotiations.</p> <p>The Division also attended and participated in four meetings of the CZI's Committees and another four meetings of the ZNCC's Committees. The attendances not only provided an opportunity</p>	

		<p>to explain trade developments within the COMESA and SADC regions, and under the WTO, but also enhanced the Commission's visibility to the business community.</p> <p>Three newspaper articles on trade tariffs issues were drafted during the year under review. The articles were on the <i>Launch of the COMESA Customs Union, Tariff Bindings and Their Importance</i>, and <i>Operalisation of the COMESA Customs Union</i>.</p>	
	<p>Processing of applications and other requests from local industry for various forms of tariff relief, throughout the year, with each application being investigated within 90 days of submission.</p>	<p>The Tariffs Division processed not less than seven applications for tariff relief, but the investigation periods of most of the applications exceeded the stipulated 90 days.</p>	<p>Investigations into applications for tariff relief took long mainly because the same officers in the Tariffs Division also attend protracted trade negotiations meetings. No information required is also not structured in formal application forms.</p>
	<p>Collaboration with private sector, donor and non-governmental organizations (NGOs) on the identification of sectors requiring assistance or protection:</p> <ul style="list-style-type: none"> • identifying organizations and institutions to collaborate with, before the end of the Second Quarter of the year; • communicating with the identified stakeholders on areas of cooperation, throughout the year. 	<p>The Trades Centre (a local trade research institute), the CZI and the ZNCC were identified as organizations to collaborate with on trade tariffs matters.</p> <p>Interaction with the above organizations was intensified during the year, which included the Commission making a presentation at a workshop on the comparison of sensitive lists that was jointly organized by the Trades Centre and the CZI.</p>	
	<p>Organisation of training on analyzing trade tariffs:</p> <ul style="list-style-type: none"> • formulating training plan, during the First Quarter of the year; • approaching donor organizations for training financing, from the Second Quarter of the year. 	<p>A training plan on analyzing trade tariffs was formulated and submitted to the WTO through the Ministry of Industry and Commerce.</p> <p>As a result of the training plan, the Tariffs Division attended training on non-agricultural market access (NAMA) in February 2010</p>	

		that focused on analytical requirements within the agricultural negotiations, and a WTO national training workshop on tariff analysis in August 2010.	
Provision of technical assistance to Government on trade negotiations	<p>Participating in regional and multilateral trade negotiations:</p> <ul style="list-style-type: none"> • attending and participating in trade negotiating meetings, throughout the year; • attending and participating in trade negotiating meetings, throughout the year; • undertaking research and analysis on market access, throughout the year; • producing status reports on market access issues, on a Quarterly basis. 	<p>The Tariffs Division attended and participated at not less than eight preparatory trade negotiating meetings under the auspices of COMESA and SADC. It also attended not less than eight trade negotiations meetings under the auspices of COMESA, SADC and ESA/EPA.</p> <p>The Division prepared the following analytical reports, which were submitted to the relevant Government authorities: (i) proposals to delay the Tariff Phase-Down Schedules for SADC sensitive products for Zimbabwe for 2010; (ii) proposals for tariff reductions for selected industries affected by the SADC Trade Protocol; and (iii) contributions to the Mid-Term Fiscal Policy Review Statement.</p> <p>Four status reports on market access issues were prepared and submitted to the Commission's Board of Commissioners through its Tariffs Committee.</p>	
Investigation and remedying of unfair trade practices	<p>Undertaking of trade defence awareness campaigns:</p> <ul style="list-style-type: none"> • conducting trade defence awareness campaigns, on a Half Yearly basis with at least two workshops held during the year; • publishing newspaper articles on trade defence mechanisms, on a Quarterly basis with the publication of at least four newspaper articles during the year. 	<p>No trade defence awareness campaigns were conducted during the year under review.</p> <p>Four newspaper articles on trade defence mechanisms were however published during the year. The articles were on <i>Unfair Trade Practices, Dumping, Subsidisation, and Safeguards</i>.</p>	<p>Financial constraints prevented the holding of stakeholder workshops on trade defence mechanisms. The workshops' resource persons, who should have been the relevant officials of the Commission's Tariffs Division, also required to undergo WTO training on trade defences.</p>

	Investigating reported or identified unfair trade practices (dumping, subsidization, etc.), throughout the year	No cases of unfair trade practices were referred to the Commission for investigation during the year under review.	Not many companies are aware of Zimbabwe's national legislation on unfair trade practices (the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002, and the Competition (Safeguards) (Investigation) Regulations, 2006) and the relief that they can get from that legislation, hence the need for trade defence awareness campaigns.
	<p>Providing specialized training in the area of unfair trade practices:</p> <ul style="list-style-type: none"> • formulating and drafting training plan on unfair trade practices, during the First Quarter of the year; • seeking government and donor funding for the training, from the Second Quarter of the year with at least two members of the Tariffs Division trained in trade defence mechanisms during the year.. 	<p>The training plan on analyzing trade tariffs that was formulated and submitted to the WTO through the Ministry of Industry and Commerce also included training on trade remedies on unfair trade practices.</p> <p>WTO was approached for funding of the training, which promised the training funding in 2011.</p>	Financial constraints prevented the training of members of the Tariffs Division in the area of unfair trade practices, but the WTO promised funding for such training in 2011 since its 2010 funds had already been committed.
Harmonisation of the Competition Act and Finance Act on trade tariffs procedural matters	<p>Conducting consultations with the Ministries of Industry and Commerce, and of Finance:</p> <ul style="list-style-type: none"> • holding consultative meetings with the relevant Ministries, by the end of the Second Quarter of the year; • proposing the necessary amendments to the Competition Act and/or the Finance Act, during the Third Quarter of the year; • drafting the amendments to the Acts, during the Fourth Quarter of the year. 	<p>Informal consultations were held with the relevant officials of the Ministry of Finance, and the Ministry of Industry and Commerce.</p> <p>The identified amendments to the Competition Act were considered and approved by the Commission's Tariffs Committee and passed on to the Legal & Enforcement Committee for the necessary legal drafting of the proposed amendments, a process that was in progress by the end of the year under review.</p>	
Carrying out research and other studies into trade tariffs issues	<p>Undertaking sector studies on trade tariffs in various industries and sectors:</p> <ul style="list-style-type: none"> • identifying industries and sectors for study, throughout the year; • training the relevant officers in research methodology techniques and analysis, throughout 	The Tariffs Division identified four sectoral areas as priority for research and study on trade tariffs issues: (i) the fertilizer industry; (ii) the poultry industry; (iii) the blanket manufacturing industry; and (iv) the motor vehicle industry.	

	<p>the year;</p> <ul style="list-style-type: none"> conducting research on the identified study areas, throughout the year. 	<p>One officer in the Division has been trained in the area of research methodology techniques, with more earmarked for such training at the University of Zimbabwe in 2011.</p> <p>As at the end of the year under review, one of the four studies under research was at desk research stage, with one at analytical stage, and two at report drafting stage.</p>	
Corporate Affairs Department			
Adherence to good corporate governance principles	Preparing, drafting and producing a corporate governance manual, by the end of the Second Quarter of the year	In preparation for its drafting of a corporate governance manual for the Commission, the Corporate Affairs Department organized participation at three corporate government workshops and seminar during the year under review.	The Ministry of State Enterprises and Parastatals also begun drafting a corporate governance frameframe for state enterprises and parastatals. There was therefore need to ensure that the Commission's manual on corporate governance is in coherent with that Ministry's framework.
Provision of legal advice on the operations and activities of the Commission	Training of legal officers in the specialized areas of the Commission's operations, and in legislative drafting, by the Third Quarter of the year and thereafter throughout the year.	The Department's legal officers underwent extensive on-th-job training on the Commission's operations. The Head of the Department also attended a regional training workshop on competition policy and law.	Even though efforts were continuing as at the end of the year under review on the identification of suitable courses on legal drafting, the major constraint was the dearth of legal officers in the Commission.
	Providing sound legal advice to the Commission's operational Divisions and support Departments, throughout the year.	The Department provided valuable legal advice to all the Commission's Divisions and Departments, as well as the Board of Commissioners, during the year under review. The advice ranged from interpretation of the Commission's enabling Act, and other Acts of Parliament, contracts with service providers.	
	Reviewing and updating the Competition Act [<i>Chapter 14:28</i>] and its subsidiary legislation.	Work progressed throughout the year on the identification of	The identified amendments to the Act were found to be so extensive that they require

		necessary amendments to the Act, and a number of proposed amendments to the Act had been approved by the Commission's Legal & Enforcement Committee.	the revamping of the whole Act, an exercise which was beyond the means of the Commission.
Provision of timely and efficient secretarial services to the Board of Commissioners	<p>Documenting the proceedings of the Board of Commissioners:</p> <ul style="list-style-type: none"> preparing agendas of meetings of the Board and its committees, throughout the year; recording proceedings of meetings of the Board and its committees, throughout the year; safe-keeping reports and minutes of meetings of the Board and its committees, throughout the year. <p>Expected well-documented minutes of meetings of the Board of Commissioners and its committees, as well as Board and committee reports.</p>	The Commission's Board of Commissioners, and its committees, was fully serviced by the Corporate Affairs Department throughout the year under review.	
	<p>Enforcing Commission resolutions and other decisions:</p> <ul style="list-style-type: none"> recording all resolutions and decisions of the Commission, throughout the year; drafting notices on the Commission's resolutions and determinations, throughout the year; notifying concerned parties of the Commission's resolutions and decisions, throughout the year; following up compliance with the Commission's resolutions and decisions, throughout the year. <p>Expected: (i) timely notification of Commission resolutions and decisions to concerned parties; (ii) compliance undertakings and agreements in place; and (iii) appropriate penalties imposed on non-compliant parties.</p>	The Commission's resolutions and determinations, particularly on competition issues, were fully enforced throughout the year. Notable enforcements included resolutions on the <i>ZESA Case</i> , the <i>Total Zimbabwe/ Mobil Oil merger</i> , and the <i>Cimas Kidney Dialysis Case</i> .	
Visibility	<p>Increasing the visibility of the Commission to its stakeholders:</p> <ul style="list-style-type: none"> formulating and drafting a public relations plan, before the end of the First Quarter of the year; 	The visibility of the Commission was greatly enhanced during the year under review, largely from the work of the Corporate Affairs Department. From	The absence of a public relations plan, which could not be formulated and drafted during the year under review because of shortage of the necessary technical skills,

	<ul style="list-style-type: none"> implementing the public relations plan, from the Second Quarter of the year. <p>Expected: (i) production of the public relations plan; and (ii) increase in the visibility of the Commission from 14% to over 75%.</p>	being only known by big and large companies, the Commission became a household name.	was a great drawback to the Commission's visibility.
Finance & Administration Department			
Mobilisation of financial resources for the funding of the Commission's operations	<p>Engaging the Government on the increase of the Commission's government grant:</p> <ul style="list-style-type: none"> making representations to Government on the filling of identified financing gaps through additional funding, before the end of the First Quarter of the year; liaising with the Commission's operational Divisions to come up with research areas and topics aimed at the effective implementation of relevant economic policies for Government funding, during the First Quarter of the year and thereafter throughout the year. <p>Expected increased Government funding of the Commission's operations and activities.</p>	Representations were made to the Government on the inadequacy of the Commission's government grant, which resulted in a modest increase in the grant.	The Government is operating under very severe financial constraints.
	<p>Maximising the collection of the trade development levy:</p> <ul style="list-style-type: none"> undertaking an audit trail on the current levy collection system, by the end of the First Quarter of the year; proposing amendments to the Trade Development Surcharge Act to include excluded import and export products, by the Fourth Quarter of the year. <p>Expected identification of revenue opportunities or linkages in the levy collection system.</p>	<p>The audit trail on the trade development levy collection system that was undertaken identified loopholes in the system, which were filled. As a result, receipts from the levy overtook the government grant in the funding of the Commission's operations.</p> <p>Amendments to the Trade Development Surcharge Act to include excluded import and export products were not done because of resistance from the Government.</p>	The Ministry of Finance strongly resisted the inclusion of excluded importations of basic commodities for consumer welfare reasons.
	<p>Reviewing merger notification fees by coming up with minimum and maximum fee levels, by the end of the Second Quarter of the year.</p>	<p>The merger notification fees were accordingly reviewed by coming up with minimum and maximum fee levels. The relevant Statutory Instruments were being drafted by the end of the</p>	

		year under review for <i>gazetting</i> .	
	<p>Mobilising the donor community for funding of the Commission's activities:</p> <ul style="list-style-type: none"> identifying and making a priority list of suitable donor organizations, before the end of the First Quarter of the year; making and submitting proposals to the identified donor organizations for funding of specific projects, from the Second Quarter of the year. <p>Expected receipt of donor funding.</p>	<p>Donor organizations that were identified for assisting in the financing of the Commission's activities included the World Bank, UNDP, USAID, GTZ, and ACBF.</p> <p>A project proposals on the financing of the Commission's activities in the areas of utilities (electricity and water) and public monopolies was submitted to the identified donor organizations, but no such assistance was forthcoming by the end of the year under review.</p>	<p>Most international donor organizations were reluctant to cooperation with the Commission because of Zimbabwe's political isolation by their funders.</p>
Retention, attraction and development of competent staff	<p>Reviewing basic salaries and allowances in the Commission with a view to increasing staff remuneration, during the first two Quarters of the year, with the expected attractive and competitive staff remuneration system.</p>	<p>Basic salaries and allowances were reviewed, and that resulted in the introduction of a number of non-monetary employment benefits.</p>	<p>The Commission is constrained in improving basic salaries in the organization because these are determined by the Government.</p>
	<p>Maintaining current staff, and expansion through recruitment:</p> <ul style="list-style-type: none"> developing a culture of multi-skill and inter-departmental cooperation, during the First Quarter of the year and thereafter throughout the year; recruiting appropriate key staff after development of a more attractive and competitive staff remuneration system, throughout the year. 	<p>Only two recruitments were made during the year under review.</p>	<p>The Board of Commissioners had suspended recruitment of staff in the Commission because of financial constraints.</p>
	<p>Training and career path planning:</p> <ul style="list-style-type: none"> undertaking audit of current staff training needs, during the First Quarter of the year; training requiring staff members through formal training programmes, throughout the year; developing career paths and succession plans through consultations with the relevant Divisions and 	<p>The audit of current staff training needs was undertaken during the year under review, and the relevant training programmes identified.</p> <p>The development of career paths and succession plans was however ongoing by the end of the year.</p>	<p>Participation in formal training programmes was hindered by financial constraints.</p>

	<p>Department, throughout the year.</p> <p>Expected production of staff career paths and succession plans, and at least a third of the Commission's staff trained during the year.</p>		
	<p>Developing staff motivation under a motivation plan, throughout the year.</p> <p>Expected production of a staff motivation plan, and increased staff motivation</p>	<p>This was not done.</p>	<p>An effective staff motivation plan is largely dependent of financial resources, which the Commission did not have during the year under review.</p>
<p>Staff awareness of the HIV/AIDS scourge</p>	<p>Developing awareness in the Commission on the menace of HIV/AIDS:</p> <ul style="list-style-type: none"> engaging the National Aids Council on the conduct of staff awareness campaigns, throughout the year; engaging other relevant NGOs on the development of appropriate training programmes, throughout the year. <p>Expected Commission staff trained and fully aware of the HIV/AIDS menace.</p>	<p>The National Aids Council was engaged to hold HIV/AIDS awareness workshops for all employees of the Commission.</p>	
<p>Provision of administrative support services</p>	<p>Providing adequate administrative services to the Commission through improvement in service delivery:</p> <ul style="list-style-type: none"> identifying appropriate training courses for staff of the Finance & Administration Department, during the First Quarter of the year, with expected administrative staff trained in service delivery; computerizing the Registry and Documentation Centre, during the Second and Third Quarters of the year, with expected computerized Registry and Documentation Centre; establishing and operationalising the Procurement Committee, during the First Quarter of the year, with expected Procurement Committee in place; concluding service level 	<p>The Commission's computerization during the Second Half of the year included some computerization of the Registry.</p> <p>The Procurement Committee was established, and is now involved in all the Commission's procurements.</p>	

	<p>agreements with all the Commission's Divisions and Departments, during the First Quarter of the year, with expected service level agreements in place.</p>		
	<p>Providing capital equipment and office consumables:</p> <ul style="list-style-type: none"> • procuring computer equipment for all Divisions and Departments of the Commission, by the Second Quarter of the year; • procuring motor vehicles for the pool and for use by members of the managerial staff, during the Third and Fourth Quarters of the year; • securing adequate funding for the sourcing of office consumables and provisions, during the Second Quarter of the year. 	<p>All the Commission's Divisions and Departments were provided with computer equipment during the Second Half of the year.</p> <p>However, only two motor vehicles were procured during the year, and that did not relieve the severe transport constraint in the Commission.</p>	<p>The Commission has other competing priorities with the procurement of motor vehicles, such as the purchase or construction of its own office premises, which are vying for the same limited financial resources.</p>
Information Communication Technology	Developing ICT and MIS in the Commission through computerization.	This is being done as an ongoing process.	
Director's Office			
Revision of the Commission's staff grading system and organizational structure	<p>Developing a conducive staff grading system and organizational structure:</p> <ul style="list-style-type: none"> • enlisting the services of expert human resources consultants, by the end of the Second Quarter of the year; • implementing the grading system and organizational structure, from the Third Quarter of the year. <p>Expected professionally done staff grading system and organizational structure.</p>	<p>Lorimak Human Resources Consultants were given the task of proposing an appropriate grading system for the Commission, which will be used to come up with a suitable organizational structure.</p> <p>The Lorimak exercise was still ongoing by the end of the year under review.</p>	<p>Financial constraints prevented the engagement of the consultants earlier during the year.</p>
Research and Development	<p>Establishing a Research Unit in the Commission:</p> <ul style="list-style-type: none"> • making proposals on the establishment of the Unit, during the First Quarter of the year; • establishing the Unit, during the Second Quarter of the year. <p>Expected operation of the Research Unit.</p>	<p>Terms of reference on the establishment of the Unit, as well as the staffing requirements of the Unit, were prepared and approved by the Board of Commissioners.</p> <p>The Unit had however still to be established by the end of the year under review.</p>	<p>Financial constraints, and the Board's suspension of recruitment of additional staff, prevented the establishment of the Unit during the year under review. It was noted that secondment of existing staff to the Unit was not feasible since none of the staff had the requisite qualifications and knowledge in research work.</p>

All Divisions and Departments

Human resources management	Implementing the Commission's Performance Management Scheme, throughout the year with expected 100% implementation of the Scheme	The performances of all the Commission's employees during the year under review were appraised.	
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