

NaCC COMPETITION NEWS

Volume 6 No. 1 2025



THE OFFICIAL NEWSLETTER OF THE
NAMIBIAN COMPETITION COMMISSION



Namibian
Competition
Commission

**FAIR COMPETITION
PROSPEROUS ECONOMY**

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CORPORATE CHARTER

Mission

The mission of the institution is to safeguard and enhance competition in the Namibian economy.

We are committed to promoting fair competition and fostering an environment that encourages innovation, inclusivity, and sustainable economic growth for all market participants. By enforcing competition laws and policies, we strive to protect consumers, support the efficient functioning of markets, and contribute to national development goals.

Vision

Our vision is to achieve fair market competition that drives inclusive growth and development in Namibia.

We envision a dynamic and competitive marketplace that provides equal opportunities for all businesses, ensures consumer protection, and supports the long-term socio-economic prosperity of the country.

OUR VALUES

Impartiality: We maintain fairness and neutrality in all decision-making processes.

Consistency: We ensure that our regulatory actions are uniform and reliable.

Accountability: We are responsible and answerable to the public and stakeholders.

Integrity: We uphold the highest ethical standards in our work.

Transparency: We operate openly, providing clarity on our decisions and processes.

Our Promise: Fair Competition, prosperous economy.



**Namibian
Competition
Commission**

01 EDITORIAL NOTE



Dear Readers,

The Commission is delighted to kick-start its first newsletter for the year 2025 after having gone through various changes in its operations and making deep footprints in implementing its mandate and having a significant impact in enforcing competition regulation in Namibia. The socio-economic

challenges brought about by the rising inflation and the Covid-19 pandemic in the preceding years have culminated in the Commission reviewing its Competition Act No.2 of 2003, which mandates the Commission's regulatory oversight over mergers, acquisitions and restrictive business practices in the Namibian market. It had to throw an eagle's eye on how to strengthen its enforcement capabilities

and sharpen its regulatory teeth, and in this regard, made recommendations accordingly. The amendments to the Competition Act are currently under review with the line Ministry tasked by the Government of the Republic of Namibia to provide policy directives for growing the Namibian economy.

In its strides for operational excellence, the Commission also applied changes to its various divi-

sions by aligning their functions and roles to speak to the scope of its operations. As such, the Corporate Services division has been renamed the Finance and Administration Division; the Restrictive Business Practices Division is now operating under the new name Enforcement, Exemptions and Cartels; whereas the Economics and Sector Research division is now referred to as the Strategy and Research Division.

In this edition, the Chief Executive Officer and Secretary to the Commission, Mr Vitalis Ndalikokule, takes us through the regulatory journey of the Commission since its inception in December 2009. In the article on Barriers to Entry, the Director for Enforcement, Exemptions and Cartels, Mr Paulus Hangula, delves into the different types of barriers to entry and opines on their negative implications on the competitiveness of small and medium enterprises, let alone their establishment and growth in the market spaces, but also offers remedial insight into how these barriers can be deterred. The Commission has concluded investigations into major companies in the pension fund industry and the ICT sector for alleged anti-competitive conduct and shares its findings with you as part of its advocacy drive in creating a competition compliance culture. This edition also explores, extensively, the concept of mergers, the importance of regulating mergers and their assessments processes within the competition law and explicate on the importance of notifying the Commission on mergers or acquisitions before implementation to avoid possible legal ramifications. The Strategy and Research division provides a discussion paper, giving us an in-depth view into the private healthcare sector, factors that impact the costs of private healthcare, and the major differences in public and private healthcare. This paper is aimed at enticing us to study the disparities in the public and private healthcare sectors, and the regulatory frameworks that guide the operations of this sector.

We are happy to once again be able to share this information platform with you, our valued stakeholders, and hope that you will be enlightened by the insightful articles contained in this newsletter.

Sincerely,
Dina Gowases

02 FROM THE CEO'S DESK



Mr Vitalis Ndalikokule

The Namibian Competition Commission (NaCC) is a regulatory body, established through an Act of Parliament, the Namibian Competition Commission Act No. 2 of 2003, with an explicit mandate to safeguard and promote competition within the Namibian market. Having been operational since 9 December 2009, the Commission aims to promote a competition culture to protect competition using available recourse and tools provided for in the Act.

The Commission's regulatory function is multi-sectoral, multifaceted, and multi supervisory and ranges from food, retail, financial services, transport, communications, construction, industrial, mining, fishing, health, manufacturing, agribusiness, and commercial businesses. As such, its oversight reaches across various business sectors.

Allow me to share with you the developments, achievements, challenges, and the way forward on which the Commission has journeyed throughout the years and would like to continue in its quest to become a competition regulator of excellence. The Commission, since its inception, has been guided and guarded by corporate governance principles and has followed through with the implementation and enforcement of the Competition Act,

without fear or favour. It had thus formulated and implemented its 2020-2025 Integrated Strategic Business Plan (ISBP), guided by the three main strategic goals: Excellence in Competition

Regulation; Advocacy and Strategic Collaboration; and Operational Excellence. The goals aim to direct the efforts and resources of the Commission towards enforcing the Competition Act and executing its mandate of safeguarding and enhancing competition in the Namibian economy. Building on this strategic plan, which has now run its course and has been effective in guiding the Commission in navigating its regulatory drive, a fifth new strategic plan, the ISBP 2025-2030, which expands on the strategic direction of the last ISBP, has been formulated in line with Section 13 of the Public Enterprises Governance Act 1 of 2019 (PEGA Act). The new five-year strategy, under the theme Promoting and safeguarding competition for inclusive and sustainable economic growth, draws on lessons learnt from the previous ISBP for the 2020-2025 financial years. I am highlighting some of the operations conducted by the Commission through its various divisions over the past 15 years. These operations comprise the activities of research; enforcement, exemptions and cartels; as well as mergers and acquisitions divisions.

Research

In respect of its research function, the Commission conducted a study in the private healthcare sector and finalised Terms of Reference (ToR) for two new studies, namely the review of the Commission's merger notification thresholds as well as the Post-Merger Impact Assessment study into the piggery market. The Strategy and Research division, which spear-

heads the research mandate of the Commission, also facilitates memoranda of understanding with local, regional, and international sector reg-

ulators. The table below indicates notable research studies undertaken over the years.

Study	Outcome / Intervention
Consumer Protection Study (2011)	This study set the groundwork for the development of the legislation on Consumer Protection in Namibia under the Ministry of Industrialisation and Trade.
Poultry and Cement Cross-Country (BW, NAM, SA, ZAM) Study (2013)	Recommendations served as input into quota allocation process in the poultry sector by the Ministry of Industrialisation and Trade.
Retail Sector Study (2014)	This study Made the recommendation for the development of the retail sector charter currently enforced by the Namibia Trade Forum.
Franchising Study (2017)	Recommendations served as input into the ongoing development of the policy and legislation on franchising currently being undertaken by the Ministry of Industrialisation and Trade.
Automotive Industry Study (2017)	Resulted in an investigation into the Automotive industry to understand the existence of exclusive distribution agreements / concerted practices and territorial restrictions between Original Equipment Manufacturers (OEMs) and their respective dealerships and approved panel beaters.
Health Sector Study (2023)	Recommendations towards addressing some identified competition challenges within the market for private healthcare.

Figure 1: Research studies undertaken over the years

Enforcement, Exemptions & Cartels

The Commission achieved a number of milestones through its 15 years of existence in the enforcement area. In respect of enforcement, the Commission's major investigations into prohibited conduct comprise investigations into the insurance in which 82 respondents were identified; pharmaceutical with more than 200 pharmacies found to have fixed prices; price fixing in the banking sector; automotive industry and the telecommunications sector.

It is notable to mention that the Commission conducted its first-ever dawn

raid in October 2016. Section 34 of the Namibian Competition Act 2 of 2003 empowers the Commission to conduct entry and search of premises "to ascertain or establish whether any undertaking has engaged in or is engaged or is about to engage in conduct that constitutes or may constitute an infringement" of the Act.

The graph below shows prohibited conduct matters considered over the 15 years of the Commission's enforcement arm. An estimated N\$54.4 million in fines were imposed for prohibited conduct over the years.

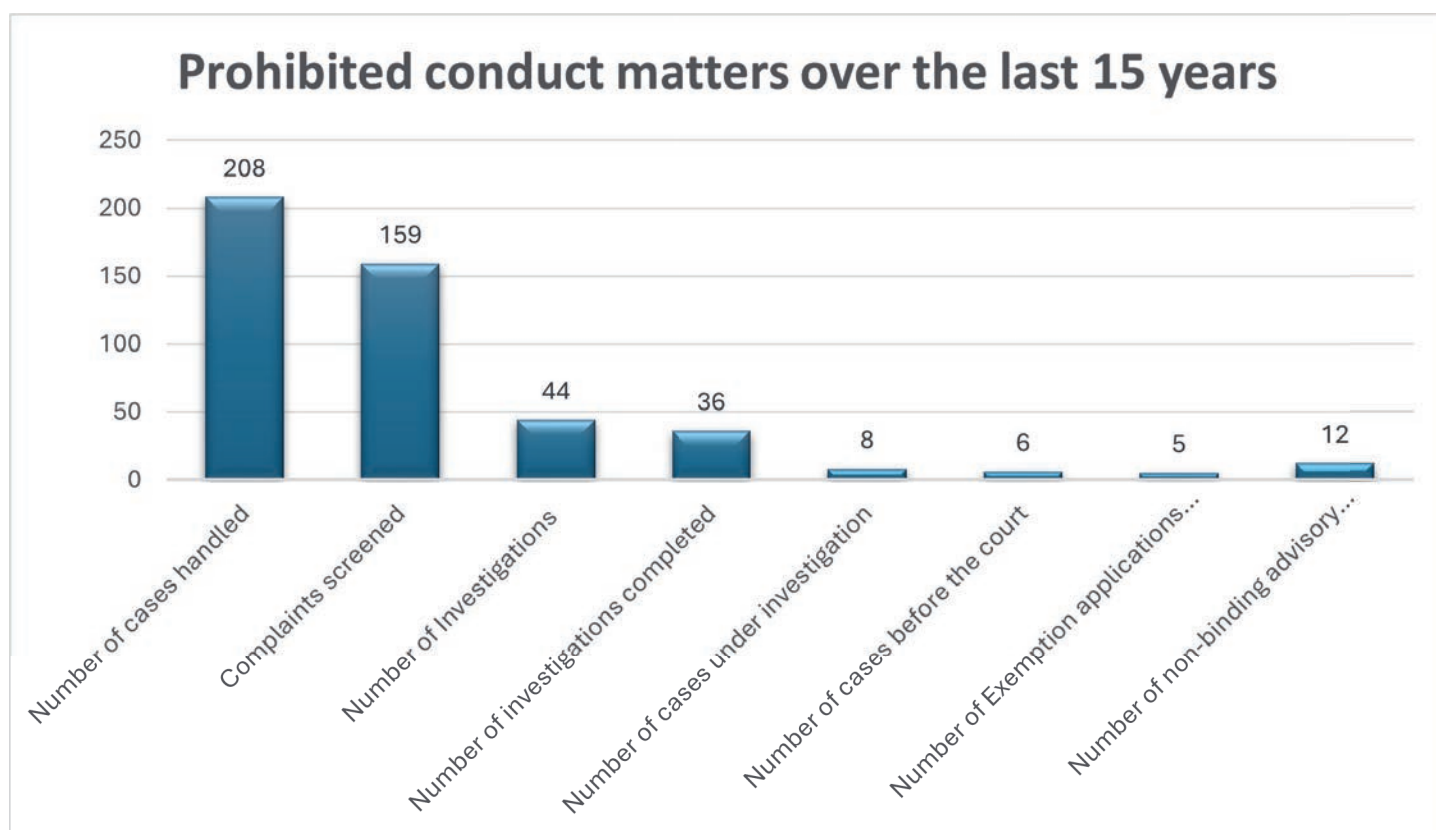


Figure 2: Prohibited conduct matters considered over the years

Mergers and Acquisitions

Chapter 4 of the Competition Act mandates the Commission to review mergers and acquisition applications; monitor compliance; investigate Chapter 4 contraventions and provide advisory opinions. Notable mergers include Heineken and Namibia Breweries Limited; Vitol Emerald BIDCO (Pty) Ltd and Engen Limited BV; Rossing Uranium and China National Uranium; and

West China Cement Limited and Schwenk Namibia (Pty) Ltd. While the merger between West China Cement Limited and Schwenk Namibia (Pty) Ltd was prohibited, the others were approved with conditions aimed at addressing competition and public interest concerns. Penalties amounting to N\$1,6 million were imposed for Chapter 4 contraventions. The graph below depicts mergers and acquisitions activities over the past 15 years.

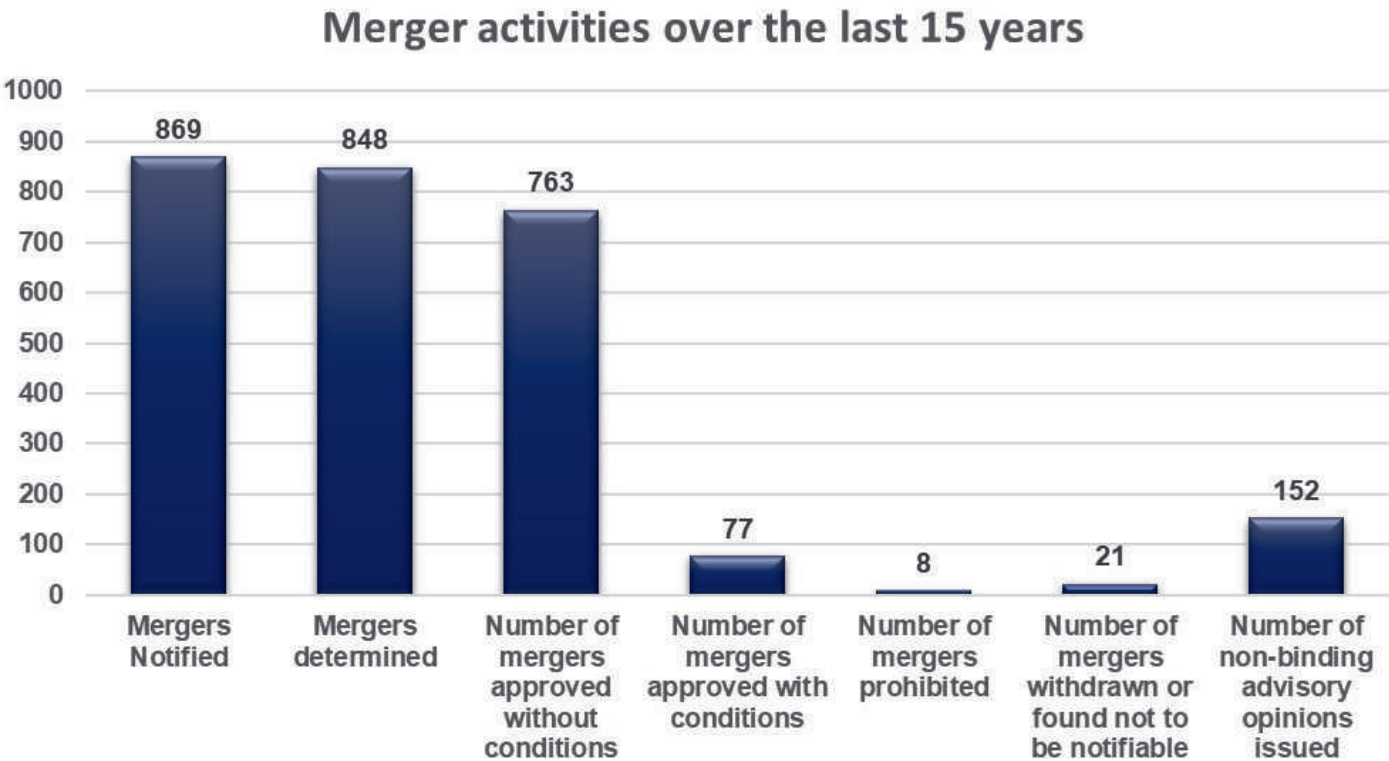


Figure 3: Merger activities over the past 15 years

Conclusion

The level of responsibility and scope of supervision of the Commission is highly significant, relevant, and central to the overall economic transformation and political and social situation of Namibia. The Commission encountered several challenges that hindered its performance. These include budgetary constraints, which hampered the implementation of several planned activities; as well as the absence of powers to summon information from third parties in respect of Chapter 4 of the Act, which continues to cause significant delays in the execution of the merger review process.

In its quest to achieve its mandate, the Commission takes to heart, the value of transparency and participation in the regulatory process to ensure that regulation serves the public and is informed by the legitimate needs of those interested in and affected by regulatory processes. By detecting and investigating cartels, sanctioning abuses of dominance and blocking anti-competitive mergers, a competition regulator ensures the correct functioning of markets, helps foster innovation and delivers lower prices, higher quality and better product choice for consumers.



03 NEWS ON ENFORCEMENT, EXEMPTIONS, AND CARTEL CASES

Introduction

The Enforcement, Exemptions, and Cartels (EEC) Division enforces Parts I, II, and III of Chapter 3 of the Act. Part I prohibits restrictive horizontal and vertical agreements, concerted practices, and decisions by an association of undertakings that have an object or effect of preventing or substantially lessening competition. On the other hand, Part II prohibits the abuse of a dominant market position, and Part III provides for exemptions of certain restrictive business practices.

Through the EEC Division, the Commission investigates various anti-competitive practices such as collusive tendering, market allocation, and price fixing, which prevent competition between undertakings and harm consumers.

The Commission recently concluded two major investigations into the pension fund industry and the Information and Communication Technology (ICT) sector for alleged anti-competitive conduct. The first investigation was conducted against the Government Institutions Pension Fund (GIPF), Kuleni Financial Services (Pty) Ltd (KFS), and Kuleni Preservation Fund (KPF). The second investigation was against the Namibia Power Corporation (Pty) (NamPower), Telecom Namibia Limited (Telecom Namibia) and Mobile Telecommunications Limited (MTC). These investigations were done in terms of Section 33 of the Competition Act No. 2 of 2003. It is important to note that although the Commission's findings have revealed contraventions of the Act, it has not yet made a final decision. In this regard, the Commission wishes to invoke the process contemplated by Section 36 of the Act and afford the Respondents an opportunity to make written submissions and/or oral representations to the Commission.

Case 1: Pension Fund Industry Investigation

Government Institutions Pension Fund (GIPF), Kuleni Financial Services (Pty) Ltd (KFS) and Kuleni Preservation Fund (KPF), collectively referred

to as "the Respondents". Following its investigation, the Commission has found that the Respondents entered into an exclusive agreement and abused their dominance, in contravention of Section 23 (1) read with 23 (2) (b), 23 (3) (e) and 23 (3) (g) of the Act and Section 26 (1) read with 26 (2) (a), 26 (2) (b) and 26 (2) (d) of the Act, respectively.

Background to the investigation:

The Commission received a complaint filed by Retirement Fund Solutions (RFS) dated the 5th of August 2020, alleging that the Respondents are engaged in restrictive business practices and abuse of dominance in contravention of Sections 23 and 26 of the Act. Consequently, the Commission on the 29th of March 2022 resolved to initiate an investigation against the GIPF, KFS, and KPF in terms of Section 33 of the Act.

Reasons for Infringement:

Aggressively cross-selling KPF to the exclusion of all other preservation funds, thereby curtailing GIPF members' access to the broader pension fund market:

- Cross-selling is a sales technique involving the selling of an additional product or service to an existing customer.
- The Commission did not find evidence of cross-selling as alleged. The Commission, however, found that following the introduction of GIPF's "member-retention strategy", GIPF members, once in the process of withdrawing and preserving their benefits are enticed to make use of KPF to the exclusion of other preservation funds in the market.

Predatory pricing:

Through the arrangement with GIPF, KFS enjoys an unfair competitive advantage as it avoids an obligation to cater for its administrative cost structure, which has to be funded from cash flow by all other competitive administrators in the relevant market.

This discriminatory conduct represents an abuse of GIPF's dominance, as it enables KFS to operate with an unfair advantage, an effective lower operating cost than its competitors.

Discrediting KFS's competitors and other pension funds offering preservation mechanisms by unreasonably delaying transfer payments to such other funds:

The investigation has not found documentary evidence of this allegation.

Market KPF through captive agents, i.e., selectively recruited brokers with whom KFS concludes exclusive agreements:

The investigation has not found documentary evidence of this allegation.

Using their dominant position to crowd out businesses owned by the private sector within the preservation fund market:

- On some transfer forms, the appointment of KFS is contained in the printed document, which offers no opportunity for any of its competitors. However, the Commission has found that some forms leave room for the appointment of KFS' competitors; nevertheless, most of such transfers were still made through KFS to KPF.
- On the other hand, the direct transfers from GIPF to KPF foreclose any competition. GIPF covered KFS's administration expenses until 2020, which KFS has not repaid (reimbursed). This cost advantage is not made available to any other competitor of KFS.
- KFS also covered KPF's operating expenses from 2017 to 2021, as a sponsor for new funds like the 'Preservation Fund expenses', which it said was necessary to assist KPF with operational expenses during the "start-up" phase. No competitors of KPF had their operating expenses covered by KFS during their "start-up" phase and therefore, the above has material negative implications on fair competition, as it places KPF at a competitive advantage over other preservation funds available in the market in accessing GIPF withdrawing members.

Using their dominant position and government guarantees for GIPF to apply predatory pricing to the fees charged by Kuli Financial Services for the preservation mechanism:

- The Commission found that GIPF was paying for KFS's administration expenses with extended credit and no repayment requirements, whilst not doing so to any of KFS's competitors. Such practice, in the Commission's view, is a demonstration of GIPF and KFS's market power. This means that KFS's competitors cannot compete fairly with KFS from a cost perspective. This, in the Commission's view, constitutes an abuse of GIPF's and KFS's joint and separate monopoly and dominant position in the relevant market.
- One of the objectives of the GIPF's member-retention strategy is to retain GIPF members following the normal termination of their GIPF membership. This is in contrast to the practice before the establishment of KPF, where GIPF members were allowed to invest their benefits in any other preservation fund on the market.
- The foreclosure of access to the supply side of the relevant market effectively crowds out other competitors in the administration and preservation fund markets, reducing the level of competition and creating structural dominance for KFS and KPF at the behest of GIPF (in the funding of expenses and contrary to GIPF's member-retention strategy).

Conclusion

- The findings reveal that the conduct of the GIPF, through its member-retention strategy and expenses subsidisation practices, violates Sections 23(3)(e) and 23(3)(g) of the Act. This discriminatory behaviour

constitutes an abuse of GIPF's dominance, benefiting KFS by reducing its operational expenses and enabling it to compete more effectively against its competitors. As a result, GIPF imposes unfair selling prices and trading conditions that its downstream competitors cannot match, violating Section 26(2)(a) of the Act.

- Furthermore, the practice creates artificial switching costs, restricting GIPF members from exploring alternative service providers and limiting competitors' ability to compete effectively in the market. This conduct entices members to accept KFS and KPF services unfairly, contravening Sections 26(2)(b) and 26(2)(d) of the Act.
- Additionally, KFS enforces an unfair pricing structure that competitors cannot match and admits to subsidising KPF during its startup phase, providing KPF an unfair competitive edge. These actions violate Sections 26(2)(a), 26(2)(b), and 26(2)(d) of the Act. As a result of these subsidies, KPF also imposes unfair pricing structures and limits competitors' market access, further violating Sections 26(2)(a) and 26(2)(b) of the Act.

Case 2 - ICT INDUSTRY:

The Commission concluded its investigation against the Namibia Power Corporation (Pty) Ltd (NamPower), Telecom Namibia Limited (Telecom Namibia) and Mobile Telecommunications Limited (MTC) for an alleged exclusive "Tripartite agreement" entered into by the three parties on the 1st of June 2012 for the lease and use of NamPower's dark optic fibre by Telecom and MTC as the "Joint Operators".

Following its investigation, the Commission found that the three parties (herein referred to as Respondents) entered into an agreement and abused their dominance, in contravention of Section 23(1) read with Section 23(2)(b), Section 23(3)(a), Section 23(3)(e) and Section 23(3)(f) of the Competition Act No. 2 of 2003 (the Act), including Section 26(1) read with Section 26(2)(b) and Section 26(2)(c) of the Act.

Background to the investigation:

The Commission received information in April 2022 alleging an exclusive Tripartite agreement ("hereinafter the agreement") entered into by the Respondents. Subsequently, the Commission on the 10th of February 2023 resolved to initiate an investigation against the Respondents in terms of Section 33 of the Act.

The agreement allegedly provides that Telecom and MTC shall have exclusive use of their proportional share of the dark optic fibre for a duration of 10 years from the date of commencement of the agreement, subject to automatic renewal for a period of 1 (one) year if the Joint Operators do not give 3 (three) months prior written notice that they do not wish to continue beyond the initial lease period of 10 years.

It is further alleged that NamPower has since 2019 offered some of the competitors of the Joint Operators access to its dark optic fibre; however, such access is granted on different terms and conditions in comparison to those that are offered to the Joint Operators. It is also alleged that the terms and conditions of the Tripartite Agreement are more favourable in comparison to those that are offered to the other market competitors, and thus the Joint Operators enjoy an unfair competitive advantage.

In addition, part of the information received by the Commission also indicated that the Communications Regulatory Authority of Namibia ("CRAN")

issued regulations prescribing the sharing of infrastructure (Government Gazette No. 6141 of 04 October 2016) and regulations to ensure fair competition in the telecommunications sector (Government Gazette No. 6593 of 14 May 2018) to which the Parties were supposed to adhere.

However, despite the CRAN regulations, the Parties continued with the Tripartite Agreement in its original form. The Commission was also made aware that CRAN had already pronounced itself in 2017, that clause 2.8 of the Tripartite Agreement contravenes the objects of the Communications Act; however the Parties have not amended the Tripartite Agreement.

The Parties are also said to be dominant in the telecommunication sector in the sense that the Joint Operators are said to control more than 80% of the telecommunication sector market, in terms of Government Gazette No. 7447 of 02 February 2021.

Reasons for Infringement:

Prevention or substantial lessening of competition in the relevant market, in contravention of Section 23(1) of the Act

- The Commission found that the agreement between the Respondents granted MTC and Telecom access to NamPower's dark fibre on relevant routes, exclusively for a period of more than 10 years (01 June 2012 – 28 February 2023) to the detriment of MTC and Telecom's competitors. Furthermore, the agreement had the object of preventing competition by virtue of various clauses.
- The investigation was concerned with the general effect of the agreement and was not solely focused on the exclusivity as provided for by clause 2.8 of the agreement. There is thus no deterrent to the investigation.
- Clause 2 of the agreement provided that for the duration of the agreement, MTC and Telecom had exclusive use of the proportionate share of NamPower's designated fibre. NamPower needs to reserve 6 pairs of the fibre for its operations, which leaves only 3 pairs of access capacity for other telecommunication service providers to lease on a dark fibre basis. Clause 2 thus limited NamPower's capacity to lease its fibre on a dark basis to other carriers.
- Clause 2.6 provided that in the event that NamPower upgrades its network during the currency of the agreement, MTC and Telecom would be entitled to extend the application of the lease and be entitled to acquire another single fibre pair (or 2 fibre cores) on the upgraded route for exclusive use on the upgraded route.
- Clause 2.7 further provided that, if NamPower establishes new routes, MTC and Telecom had the first option to each acquire a minimum of two fibre pairs (or 4 fibre cores) of DWDM-Capable fibre in any fibre installed on such new routes.
- Clause 3.2 further provided for an automatic renewal of the agreement for a further period of 1 (one) year if the Joint Operators (being MTC & Telecom) do not give 3 (three) months prior written notice that they do not wish to continue beyond the initial lease period of 10 years. This effectively meant that the Joint Operators dictated the duration of the agreement, unless all the parties agreed to terminate the agreement.
- Cumulatively in terms of the above clauses, MTC and Telecom, as a result of the agreement, were in a position to dictate the duration of the agreement as from 1st June 2012 until 31st May 2022, when the "Automatic renewal clause" was amended by the First Addendum to the agreement. This was detrimental to MTC and Telecom's competitors,

as for the above-mentioned period, they could not be granted access to NamPower's optic fibre on a dark fibre basis due to limited capacity some of which has been reserved for Telecom and MTC solely.

- Furthermore, Clauses 2.6 and 2.7 of the agreement had the object of stifling competition in the sense that, despite an increase in capacity of a limited resource which is dark fibre, MTC and Telecom still would have the first option to acquire those additional cores despite growth in the market by new entrants that require the same resource. MTC and Telecom had gained priority access to dark fibre for any new routes in perpetuity.
- Other telecommunications service providers were at a competitive disadvantage as a result of the agreement, as Paratus, for instance has been laying its own fibre for the past few years, whereas MTC and Telecom had access to NamPower's countrywide fibre network, and the only investment they had to make was the equipment needed for lit fibre in order to offer their services and generate revenue.

Direct or indirect fixing of trading conditions, in contravention of Section 23(1) read with Sections 23(2)(a) and 23(3)(a) of the Act

- By virtue of the agreement, MTC and Telecom fixed trading conditions. In that, for the duration of the agreement, their competitors could only be afforded different terms and conditions of accessing NamPower's optic fibre network. MTC and Telecom were afforded dark fibre, whilst their competitors were afforded access in terms of the Grid Online service offering. The agreement limited NamPower's ability to grant access to its dark fibre to other carriers.
- Because the agreement dictated that 3 out of 6 pairs of fibre cores are exclusively leased to the Joint Operators, this left only 3 more pairs that NamPower can distribute amongst more than 50 telecommunication license holders available in the market.
- The existence of the agreement made it impossible for NamPower to open up the market to the Joint Operators' competitors on equal terms and conditions.

Vertical agreements which limit or control market access in the relevant market, in contravention of Section 23(1) read with Sections 23(2)(b) and 23(3)(e) of the Act

- The Commission established that NamPower is in a vertical relationship with MTC and Telecom respectively, as the supplier or grantor of access to its dark fibre to its customers, MTC and Telecom, as contemplated by Section 23(2)(b) of the Act.
- The vertical agreement so entered by the parties limits and controls market access in the relevant market by virtue of the fact that NamPower only offers access to its optic fibre on a dark fibre basis to Telecom and MTC exclusively, and other carriers are offered access via the Grid Online service offering.
- Although MTC and Telecom could offer, and they do, managed capacity services to other carriers, apart from the services they offer to their retail customers, it is not justifiable that MTC and Telecom offer managed capacity to their competitors because of the access they have to NamPower's optic fibre when their competitors could also have had the same access to dark fibre, absent the agreement.
- This ultimately stifles market access and growth due to the increased costs associated with an input infrastructure required for the provision of supplying telecommunication services.

Vertical agreement which applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, in contravention of section 23(1) read with sections 23(2)(b) and 23(3)(f) of the Act

- Similarly, by virtue of the agreement, the competitors of MTC and Telecom were afforded different terms and conditions of accessing NamPower's optic fibre network. MTC and Telecom are afforded dark fibre, whilst their competitors are afforded access to Grid Online, thereby placing them at a competitive disadvantage. The Grid Online service offering is relatively more expensive, this has been confirmed by both MTC and Telecom. Furthermore, other competitors of MTC and Telecom indicated that their access to Grid Online is at higher rates than those being charged to MTC and Telecom, therefore making their services more expensive as a result of the agreement.
- The existence of the agreement made it impossible for NamPower to open up the market to the Joint Operators' competitors on equal terms and conditions. Dark fibre and managed capacity, which are offered by Grid Online, are essentially different methods that NamPower offers access to its optic fibre network.
- The dark fibre was reserved for Telecom and MTC exclusively for their respective proportionate share as per clause 2 of the agreement. The Grid Online managed capacity is open to all current and future telecommunications services providers.
- According to NamPower, some of the competitors of MTC and Telecom have made it clear that they want to lease NamPower's fibre on the same terms and conditions offered to MTC and Telecom.
- Based on the above, the agreement thus amounts to applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage in contravention of Section 23(1) read with Sections 23(2)(b) and 23(3)(f) of the Act.

Possible abuse of dominance by directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; limiting or restricting market access and applying dissimilar conditions to equivalent transactions with other trading parties in the relevant market, in contravention of Section 26(1) read with Section 26(2)(a), 26(2)(b) and Section 26(2)(c).

The Commission established that the Respondents meet the N\$ 10 million dominance thresholds as per their respective revenues outlined in their respective financial statements, which is the trigger for the application of abuse of dominance provisions.

Naturally, by virtue of the terms of agreement and objective facts, all the Respondents are dominant in the relevant market due to the following reasons:

- NamPower is dominant in the upstream market of supplying/leasing its optic fibre network on a dark fibre basis to telecommunications services providers, of which NamPower is the sole custodian.
- MTC and Telecom are dominant in the downstream market of access/use of NamPower's dark fibre, as they are the only operators that have been granted access to NamPower's dark fibre specifically. Other operators such as Paratus and MTN have been granted access to NamPower's Grid Online Service offering, which is lit capacity, that is different from dark fibre, which is unlit fibre.
- The performance of the telecommunication sector shows that the larg-

est operators within that sector are only two (2) (MTC and Telecom), with their market Concentration Ratio (CR) amounting to 88% in 2018 & 2019, 87% in 2020, 83% in 2021, 84% in 2022 and 80% in 2023 in terms of assets, while in terms of revenue, their CR amounts to 86% in 2016, 87% in 2017, 84% in 2018, 85% in 2019 and 82% in 2020, and others representing 64 telecommunication license holders only account for less than 20% of the market share in terms of both assets and revenue.

- Telecom and MTC both have a market share of more than 45% in terms of access to NamPower's dark fibre. Furthermore, they possess market power in that, for the duration of the agreement, Telecom and MTC were in a position to dictate the duration of the agreement by virtue of the automatic renewal clause (clause 3.2), up until it was amended on 1 June 2022 by the First Addendum.
- The Commission established that the telecommunications sector has developed with more entrants in the market. As a result of such growth, NamPower received numerous requests from other players to provide backhauling services in an open and equal manner.
- NamPower is applying dissimilar conditions to equivalent transactions with other trading parties in the relevant market in that, dark fibre was afforded to Telecom and MTC only, whereas MTN, Paratus and prospective optic fibre lessees are offered managed capacity via NamPower's Grid Online offering.
- Furthermore, this amounts to limiting or restricting market access by virtue of raising MTC and Telecom's rivals' costs. An undertaking can ensure that its competitors face higher costs and lose market share by making access to resources (inputs needed for production or distribution) more costly.
- The Commission has not found any evidence that signifies that MTC and Telecom are abusing their dominance.

Conclusion of the two investigations:

Regarding both investigations, the Commission notes that it has not made a final decision regarding the two cases and has to engage the processes of Section 36 of the Act to grant the concerned parties an opportunity to make written submissions and/or indicate whether they would like to make oral representations to the Commission. Upon consideration of any written and oral representations by the concerned parties, the Commission may institute proceedings in the High Court against the parties, in terms of Section 38 of the Act.

The Commission also wishes to advise that in terms of Section 40 of the Act, the Respondents have an opportunity to engage the Commission for possible settlement of this matter and avoid proceedings under Section 38 of the Act.





By Paulus Hangula

Director: Enforcement, Exemptions & Cartels – NaCC

Introduction

Most developing countries in Sub-Saharan Africa, such as Namibia, face the great economic challenge of inequality when it comes to wealth, income, as well as opportunities, and it is mainly cascaded with respect to race or gender. Broadly, evidence has shown that the market power of large firms increased since the 1980s and has contributed to inequality through the transfer of wealth from consumers and workers to business owners. Additionally, the financialization of many non-financial corporates has embraced the notion of shareholder value, which focuses on shareholder maximisation with relatively little attention paid to workers' compensation, presenting a further blow to equality.

Empirical data paint a picture that associates high inequality with high unemployment. This can easily be observed through the rankings, where most of the countries at the top of the inequality charts also feature high on the unemployment rate rankings. Furthermore, globalisation and the push for further trade liberalisation have not helped the situation and have made it much worse. Thus, highly unequal countries like Namibia are fighting such battles while at the same time facing an unbalanced competitive landscape between domestic small and medium enterprises (SMEs) and their large, often well-funded, multinational competitors. There are various barriers that make market entry and survival quite difficult for SMEs. This article, therefore, highlights how, through addressing barriers faced by SMEs, job creation and inequality processes can be improved, especially in Sub-Saharan African countries, like Namibia.

Africa is one of the richest continents in terms of mineral resources. However, the majority of the poorest world populations live in Africa. In addition, the gap between the rich and the poor is not just one of the widest in Africa but, like anywhere else in the world, has been increasing over the years. The richest 0.0001% of the continent's population own 40% of the wealth of the entire continent. Literature records that Africa's richest billionaires have wealth more than the bottom 50% of the population of Africa, which is approximately 650 million people. It is estimated that by the year 2030, nearly 90% of the extremely poor people will live in Sub-Saharan Africa. When it comes to country-specific inequality, evidence shows that Sub-Saharan Africa accounts for the majority of the 10 most unequal countries in the world, with South Africa and Namibia being ranked the two highest in the world with a Gini Index of 63% and 59%, respectively. Furthermore, these two countries are ranked among the top 10 in unemployment ratings, with South Africa sitting atop with 29.8% and Namibia seventh with 20.8%, in Sub-Saharan Africa, as per the International Labour Organisation modelled estimate of 2023.

Types of barriers to entry

There are two types of barriers to entry, with the first being natural barriers (also referred to as "structural" barriers) and the second barrier identified as artificial barriers (also referred to as "strategic" barriers). Natural barriers include economies of scale; network effects; high research and development costs; high start-up costs; and access to resources (funding, basic services, physical space etc.). Artificial barriers comprise contracts, patents, licenses, brands, advertising, and abuse of dominance conduct such as predatory prices, switching costs, and loyalty schemes.

In Namibia, many funding institutions require one to have collateral in order to create a start-up, but the poor do not possess such collateral. As such, many end up not meeting funding requirements. Many natural barriers discourage or prevent the creation of small businesses by low-income earners. Even where they succeed and set up small businesses, they are further likely to experience artificial barriers to entry due to the unbalanced competition landscape in many sectors of the economy.

Generally, barriers to entry negatively impact job creation, as SMEs are known to be catalysts of job creation. Secondly, they have adverse effects on the development of any economy because they prevent the spread of wealth and inclusive economic growth. Enhancing access to the economy through reducing barriers and proactively supporting SMEs can play an important part in changing the structure of the economy.

Targeted interventions

There is a need for targeted interventions that focus on reducing barriers to entry for low-income earners and SMEs in order to enhance inclusive growth. A comprehensive policy framework along two dimensions is therefore required.

Firstly, there should be reforms tackling both regulations and government actions that give rise to implicit structural barriers to entry. In practice, certain regulatory requirements can be altered to accommodate SME start-ups. This can be in the form of tax holidays (affording them certain months to set up without paying tax/paying lesser tax); payment holidays (loan repayment holidays); funding initiatives (funding through equity/equipment); and collective backward/forward linkage support (funding not just a specific point in the value chain, but also ensuring access to suppliers, pre-production, and access to markets post-production). There is usually an expressed view that SMEs tend to fail at a higher rate. It is, therefore, important to consider the leading cause of failure of SMEs and redirect

some focus to prevention. To determine this, the Government should monitor and evaluate start-up initiatives at certain intervals. Furthermore, successful SME start-ups should be used as case studies for future start-ups.

Secondly, competition policy should take into account Namibia's unique economic characteristics. In South Africa, competition policy is used as part of the country's response to its socio-economic challenges, whereby equity is a recognised goal and an acceptable consideration of competition law. This aims to incorporate inclusivity into competition regulation. Incorporating inclusive growth into competition regulation alone is, however, not enough to address the concerns of high inequality.

Competition policy must be cognisant of the global economic environment. Competition authorities must be given opportunities to consider and advise on the impact of any proposed international trade interventions. For example, a tariff reduction on staple food that is highly subsidised in advanced countries could be detrimental to the business continuity of many small domestic producers, ultimately leading to job losses in the economy. Competition policy should also ensure that SMEs, especially those owned by low-income earners, have an equitable opportunity to participate in the market by combating abuse of dominance, restrictive agreements, and anti-competitive acquisitions. This can be enhanced by ensuring that those tasked with regulating competition in the economy continue to be well-equipped in terms of financial and human resources.

In conclusion, limiting barriers to entry can contribute to inclusive growth, while on the other hand, enhancing SMEs' competitiveness will not only create employment and provide consumers access to competitive prices and choice but also means that the economy will experience innovation and technological advancement, which is a must in today's age of digitalisation.





05 MERGER REGULATION IN NAMIBIA

Introduction

Competition between undertakings creates an incentive for undertakings to lower prices, increase output, improve the quality of their products and services, as well as introduce new and better products and services. However, mergers usually change the competitive incentives of the merging parties and their competitors, as the merging parties' incentives become aligned after a merger. This article explicates on the subject of merger regulation in Namibia.

Chapter 4 of the Act

According to the Namibian Competition Act, Act No. 2 of 2003 (the Act), "a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking". A merger may be achieved in various ways, be it through a purchase or lease of shares, an interest, or assets of other undertakings in question, and/or an amalgamation or other combination with other undertakings.

Chapter 4 of the Act applies to every proposed merger unless excluded by the Minister of Industrialisation and Trade (Minister) by notice in the Government Gazette. As such, no merger may be implemented until the Namibian Competition Commission (the Commission) decides either to unconditionally approve, conditionally approve, or prohibit such a merger. Failure to notify a merger is a punishable act which, amongst others, can attract a pecuniary penalty of not more than 10% of the undertaking's global turnover.

In order to optimally utilise its resources and concentrate more on potentially anti-competitive mergers, the Commission intro-

duced merger thresholds. Based on the current merger thresholds,¹ the combined turnover and/or assets of both the target/transferred undertaking and the acquiring undertaking must exceed N\$30 million, and the target/transferred undertaking turnover or assets must exceed N\$15 million. The above notwithstanding, mergers that fall below the merger threshold may also be anti-competitive (e.g., if the target/transferred undertaking is a maverick, a small, aggressive undertaking that it is able to behave in a manner that differs from the industry norm), and as such, the Commission has a clawback provision that enables it to request

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parties to notify or file a transaction that falls below the prescribed merger thresholds.

For a merger to be notifiable to the Commission, it must first satisfy the definition of a merger, and secondly, the undertakings involved must meet the set merger thresholds. Once a transaction satisfies the above-mentioned requirements, each of the merging parties involved are required to complete Form 38 and Form 39. Further, merging parties are required to pay a merger filing fee. The fee payable depends on the assets and turnover of the acquiring and the target/transferred undertaking and ranges from N\$10,000 for a combined turnover and/or assets below N\$ 50 million to N\$500,000 for a combined turnover and/or assets above N\$ 3.5 billion. The applicable timeframes to complete a merger investigation commence once the merger filing is complete (all relevant forms and documents are provided to the Commission) and the requisite filing fee is paid.

Merger Assessment

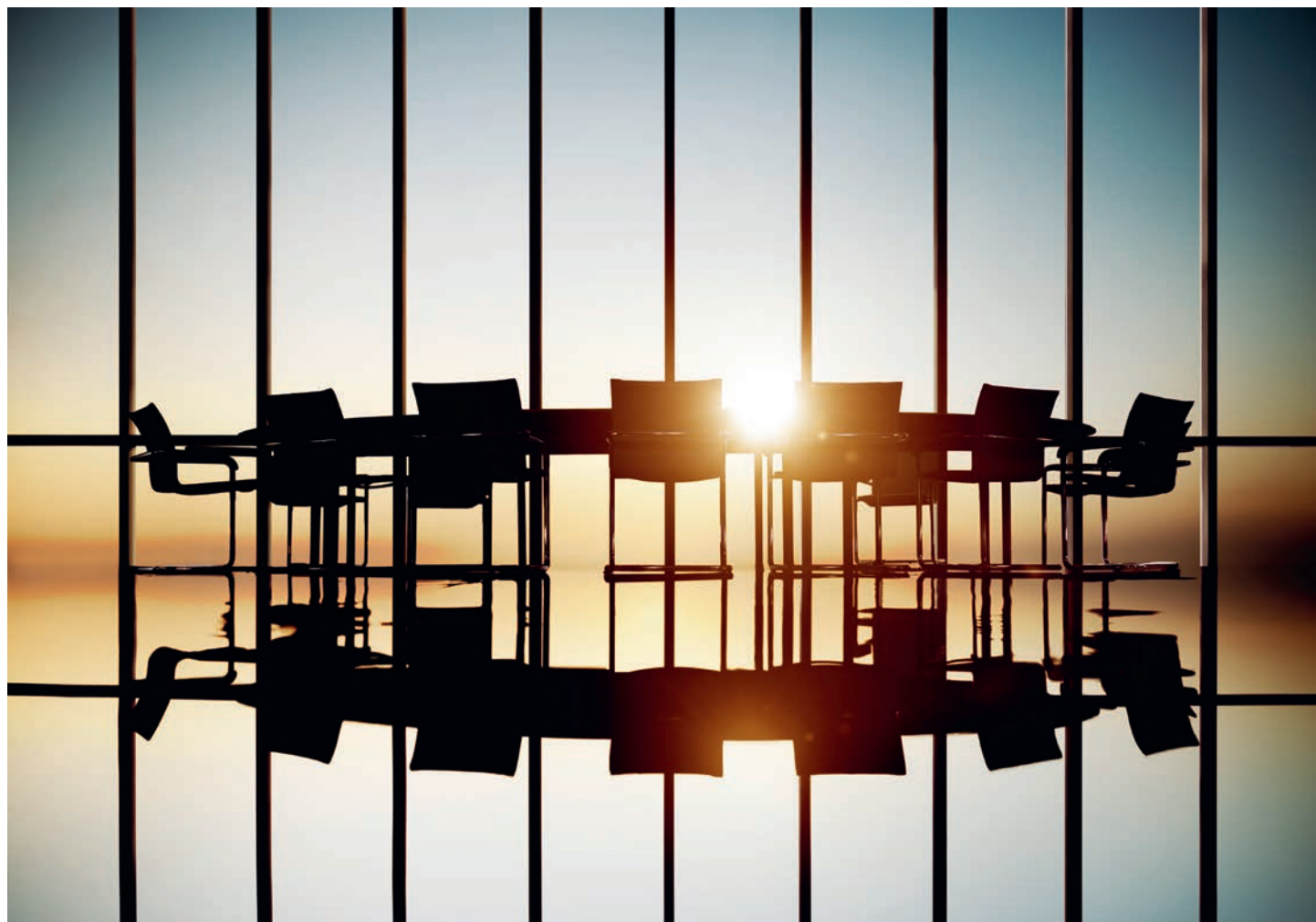
In conducting its investigation, the Commission assesses the likely impact a particular merger will have on competition and public interest. This means that a merger may be prohibited or approved subject to certain conditions if it raises public interest concerns. When assessing the public interest factors, consideration is given to whether the merger negatively impacts employment, an industrial sector or region, market access, and the competitiveness of Small and Medium Enterprises ("SMEs") and

the national industry's ability to compete in international markets. To date, no mergers have been prohibited based on public interest concerns.

The role of the Commission is to ensure that mergers that create, enhance, or establish market power or facilitate its exercise are deterred. A merger enhances market power if it is likely to encourage one or more undertakings to raise prices, reduce output, reduce innovation, or otherwise harm customers because of reduced competitive constraints or incentives. Thus, in evaluating how a merger will likely change an undertaking's behaviour, the Commission focuses primarily on how the merger affects conduct that would be most profitable for the undertaking.² The Commission must identify the possible adverse effects that are likely to arise from the implementation of the merger.

Conclusion

Competition is good for businesses and consumers. Whilst it provides consumers with low prices, quality goods and services, and a greater variety of products and services, it encourages undertakings to grow their businesses through innovation. Therefore, the Act is not meant to discourage competition or undertakings' growth but to ensure that all undertakings compete fairly, and consumers are not made worse-off. A competitive or neutral merger means consumers, amongst others, benefit from lower prices and enhanced innovation between undertakings, unlike with an anti-competitive merger.



⁰¹Government Notice No. 5905, 21 Dec 2015

⁰²Horizontal merger guidelines U.S Department of Justice and the Federal Trade Commission, August 19, 2010

THE ROLE OF MARKET STUDIES IN TACKLING EMERGING COMPETITION ISSUES

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The views expressed in this paper are those of the author(s) and do not necessarily reflect the views or policies of the Namibian Competition Commission (NaCC) and its Board of Commissioners. The NaCC does not guarantee the accuracy of the data included in this paper and accept no responsibility for any consequences of their use.

Terminology used may not necessarily be consistent with NaCC official terms.

Introduction

The effectiveness of competition policy should not be limited to enforcement actions against anti-competitive conduct but should encompass proactive measures to assess market structures and identify potential distortions. Market studies play a crucial role in doing just this by providing the necessary economic expertise and insights to promote competitive markets and tackle unfair practices.

Market studies have a profound impact on economic growth and consumer welfare. According to the OECD, effective competition policy, supported by market studies, can increase GDP by up to one to two percent annually in some countries. In general, market studies have the potential to contribute to job creation, SME growth, and improved consumer outcomes by identifying and addressing market inefficiencies. For instance, a study that leads to the removal of anti-competitive barriers in the agricultural sector could boost productivity, create jobs, and reduce food prices, benefiting both producers and consumers. This article explores the role of market studies in tackling emerging competition issues in Namibia and their importance in fostering a competitive inclusive economy.

Understanding Market Studies

Competition regulation, market studies refer to research projects conducted to gain a comprehensive understanding of how sectors, markets, or market practices work. Their primary objective is twofold: to enhance consumer welfare by ensuring that markets function efficiently and fairly and to promote competitive market structures that foster economic growth. Generally, the decision to conduct a market study is prompted by the need to identify inefficiencies in the market. Inefficiencies suggest that a particular market is not operating optimally. Identifying this paves the way for competition authorities to intervene and assess whether competition-related concerns are the contributing factor.

To diagnose the market's structural and behavioural characteristics, competition authorities initiate market studies with the objective to identify potential anticompetitive factors that lead to undesirable outcomes, such as inflated prices, reduced innovation, or weak consumer responsiveness to price changes. Once the market study uncovers anticompetitive elements, a competition assessment considering behavioural, structural, and regulatory aspects of the market, is conducted to determine whether any intervention is required. Through the use of evidence-based insights, targeted interventions can be implemented to restore proper market func-

tioning, should it be concluded that ineffective competition is the root cause of market inefficiencies.

Unlike in the case of enforcement actions, which are reactive and target specific anti-competitive practices, market studies are proactive and focus on broader market issues that may harm competition, consumers, or businesses.

The Significance of Market Studies in Competition Enforcement

Market studies play an integral part in ensuring effective competition policy implementation. They contribute to enforcement actions in several ways:

1. Identifying Potential Market Distortions

Market studies provide data-driven insights that help detect and address potential anti-competitive behaviour. If a study identifies cartel-like behaviour, abuse of dominance, or restrictive agreements, the Commission may, through the respective division open a formal investigation into specific firms or industries.

2. Guiding Merger Assessments

When assessing mergers and acquisitions, market studies have the potential of establishing market concentration levels, barriers to entry, and consumer welfare impacts. Thus, ensuring that merger approvals or prohibitions are based on thoroughly researched economic analysis.

3. Shaping Policy and Regulation

Market studies can examine the impact of public policies and regulations on competition. In some cases, government interventions—such as licensing requirements, price controls, or subsidies - can inadvertently create barriers to entry, distort competitive dynamics, or limit market expansion. By highlighting such restrictions, market studies enable competition authorities to advocate for pro-competitive regulatory reforms that enhance market efficiency and level the playing field for small and medium enterprises (SME's). One notable case of such would be the United Kingdom's Competition and Markets Authority's (CMA's) study into the UK energy market, which identified anti-competitive practices and resulted in reforms that lowered prices and improved service quality for consumers. Similarly, the European Commission's Digital Markets Act (DMA) was informed by market studies that highlighted the dominance of large online platforms, leading to regulations that promote fair competition in digital markets.

4. Identifying Market Failures

In Namibia's small economy, market failures—such as dominance by a few players, weak competition in essential sectors, or regulatory inefficiencies—can significantly impact economic growth. Market studies gather intelligence from various sources to identify markets that appear to be inefficient. Once a problem is identified, the study examines the root cause of it, its repercussions on the market and provides recommendations on the most appropriate means to enhance market competitiveness.

Market Studies: The Namibian Context

The Namibian Competition Commission (the Commission) is mandated under the Competition Act, Act No.2 of 2003, ("the Act"), to promote and safeguard competition that fosters the efficiency, adaptability, and development within the Namibian economy, and to provide consumers with competitive prices and product choices. Furthermore, the Act makes provision for the Commission to conduct research into matters either on its

initiative or at the request of the Minister of Industrialisation and Trade (the Minister). In fulfilment of this mandate, the Commission, through the Economics and Sector Research Division conducts economic analysis, evaluates the economic impact of competition cases, and undertakes market studies to support informed enforcement of competition law.

The Commission has, over the years, conducted a number of market studies in sectors such as automotive, retail and health. The ultimate outcome of these studies included policy changes, legislative development, legislative reform or investigations or other industry interventions, to correct identified inefficiencies. Studies into the franchising industry led to recommendations that served as input into the ongoing development of the policy and legislation on franchising. Automotive Industry Study made recommendations which resulted in an investigation in the sectors.

Challenges in Market Studies

While market studies are essential, their effectiveness can be limited by several factors. Two such factors include the lack of compulsory powers to summon information as well as resource constraints.

Unlike in the case on many other jurisdictions where authorities can subpoena information from business and stakeholders for the purpose of market studies, the Commission lacks such legal authority, making it slightly more difficult for the Commission to obtain information from parties. This further highlights the implementation challenges associated with market studies. Their strong potential to provide strong recommendations, translating them into effective policy or enforcement action is often delayed due to such bottlenecks. One way to combat this would be for the Commission to advocate for legal reform and request for market inquiry powers that would allow for stronger enforcement capabilities.

Moreover, due to their extensive nature, conducting a market study requires significant financial and technical resources. The entire process involves comprehensive data collection through surveys and interviews, detailed market analysis to understand trends and customer behaviour, and technical feasibility assessments to evaluate potential challenges. At times, the Commission would need to engage technical experts in various fields, either directly or through the procurement of an external consultant. Through regularly working with regional bodies such as ACF, SADC, SACU, COMESA, the Commission can benchmark from best practices and improve cross-border competition assessments leveraging on the collaboration with regional expertise. Ultimately, investment in economic research expertise and data analysis tools has the potential to ensure high quality research output.

Conclusion

Market studies are indispensable tools used by competition authorities in promoting competitive markets and addressing emerging competition issues. By providing detailed economic insights, these studies help identify market distortions, guide merger assessments, shape policy and regulation, and pinpoint market failures. Despite their importance, the effectiveness of market studies in Namibia is hindered by the lack of compulsory powers and resource constraints. Addressing these challenges through legal reforms and increased investment in research expertise and data analysis tools will enhance the Commission's ability to conduct thorough market studies and enforce competition law effectively. Ultimately, strengthening the capacity for market studies will contribute to a more competitive and dynamic Namibian economy, benefiting consumers and fostering economic growth.

THE IMPORTANCE OF REGULATING MERGERS AND ACQUISITIONS IN THE NAMIBIAN ECONOMY

Introduction

It is estimated that over 125 jurisdictions around the world have competition regulations.³ The majority of these jurisdictions have enforcement measures in place to ensure that these merger regulations are adhered to.⁴ The primary goal of competition regulation in any jurisdiction is to promote competition in different industries by regulating business practices that restrict competition in order to protect and enhance consumer welfare.⁵ This is the same for Namibia, the competition regulations are primarily enshrined in the Competition Act No. 2 of 2003 (the Competition Act), which provides for the establishment of an authority or regulator, the Namibian Competition Commission (NaCC). The NaCC became operational in December 2009, promoting and safeguarding fair competition in the Namibian economy.

Amongst the functions of the Competition Act is promoting the efficiency, adaptability and development of the Namibian economy; promoting employment and advancing the social and economic welfare of Namibians; expanding opportunities for Namibian participation in world markets while recognising the role of foreign competition in Namibia; ensuring that small undertakings have an equitable opportunity to participate in the Namibian economy; and promoting a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.⁶ The functions of the NaCC are divided into two: firstly, the prohibition of restrictive business practices, and secondly, the regulation of mergers and acquisitions. With this in mind, this article does not delve into the prohibition of restrictive business practices but focuses on the regulation of mergers and acquisitions, specifically examining the importance of regulating mergers and acquisitions in the Namibian economy.

Defining mergers and acquisitions

In terms of the Competition Act, a merger or acquisition occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking by purchasing or leasing of shares, interest, or assets of the other undertaking. In addition, mergers or acquisitions also occur by an amalgamation or other combination with another undertaking.⁷ Similarly, in terms of Article 23(1) of the COMESA Competition Regulations, mergers or acquisitions are defined as 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 the competitor, supplier, customer or other person, whether that controlling interest is achieved as a result of the purchase or lease of the shares or assets of a competitor, supplier, customer or other person; the amalgamation or combination with a competitor, supplier, customer or other person; or any means other than as specified.⁸ Likewise, in terms of the EU, a merger or acquisition is referred to as a 'concentration', which is defined as the legal combination of two or more firms by merger or acquisition.⁹ From the above definitions, it is clear that the common factor

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in defining mergers and acquisitions is the combination of two or more entities which occur through the purchase of shares, interests or assets.

Characteristics of the Namibian economy

Although Namibia is identified as the driest country in sub-Saharan Africa, the country is extremely rich in mineral resources.¹⁰ Namibia shares borders with Angola, Botswana, South Africa, and Zambia, which makes it an ideal location for trade.¹¹ The Namibian economy is characterised by political stability and sound economic policies, which have led to the categorisation of the country as an upper-middle-income country.¹² However, the Namibian economy is a relatively small-sized economy, with few businesses in various industries compared to neighbouring countries.¹³ According to the World Bank, the Namibian economy is still affected by the previous exclusionary system of the apartheid government, and the majority of the population today is known as historically disadvantaged persons.¹⁴ Additionally, the economic advantage is held by a few individuals, which has led to Namibia being ranked as the most unequal country in the world.¹⁵ Due to persistent negative per capita GDP growth since 2016 and the impact of Covid-19 on incomes per household, poverty has increased.¹⁶

Therefore, the Commission has an important role to play in the success of the Namibian economy. The welfare and success of the Namibian economy is based on various factors, which include effective and efficient laws resulting in a healthy economy where competition, consumer welfare, and the enhancement of efficiency exist. The Competition Act gives the NaCC, as the competition authority or regulator, the mandate to investigate the impact of mergers or acquisitions on competition in all industries in the Namibian economy, except in relation to goods or services which the Minister of Industrialisation and Trade, with the concurrence of the Commission, declares, by notice in the Gazette, to be exempt from the provisions of the Competition Act.¹⁷ In its investigations, if a merger or acquisition will result in competition concerns, such as substantially preventing or lessening competition and creating a dominant position in the market,¹⁸ the NaCC has the authority by virtue of the regulations in place to conditionally approve or prohibit a merger or acquisition. The act of conditioning or prohibiting a merger or acquisition is to intervene and resolve anti-competitive effects before they occur in a particular market or industry in the economy.¹⁹



The importance of regulating mergers and acquisitions in the Namibian economy

Regulating mergers and acquisitions has the ability to promote fairness in the economy, as after a rigorous investigation on the impact of a merger or acquisition on a particular market or industry, the NaCC will ensure that the correct remedies are in place to equalise the market or industry conditions. The purpose of remedies is to cure the identified detrimental harm that will arise as a result of the merger or acquisition, restore and maintain competition in different markets and industries in the Namibian economy.²⁰ These remedies are only imposed by the NaCC to address detrimental effects and should have the ability to be implemented and monitored effectively.²¹ These remedies usually take the form of imposing structural and behavioral remedies.²² Structural remedies may include the divestiture of assets of the merged entity in order to decrease their market power.²³ On the other hand, behavioral remedies include ensuring that the merged entity will commit to the continuation of providing services or goods, carrying out business in a particular manner post-merger, or retaining certain prices, to name a few.²⁴

Regulating mergers and acquisitions has the ability to improve the quality of goods and services. The quality of goods and services is usually a result of having competition in the different markets and industries in the economy. There is a likelihood of a variety of goods and services, which increases choices and quality as the goods and services compete against each other. This is only possible when mergers and acquisitions are regulated in order to ensure that there is no elimination of effective competitors, substantial lessening or prevention of competition in any market or industry. Regulating mergers and acquisitions has the ability to contribute to the reduction of poverty, which is an indicator of a thriving economy. In terms of section 47 of the Competition Act, during merger and acquisition investigations, the NaCC must consider public interest such as employment, which ensures that no employees lose their jobs as a result of a merger or acquisition as in many cases there may be a duplication of job functions where entities in the same industry merge. In addition, in light of the inequality in the Namibian economy, the NaCC also has the mandate to consider increasing the economic opportunities of historically disadvantaged persons and the protection of small and medium enterprises.

Regulating mergers and acquisitions has the ability to enhance economic development by direct foreign investments in areas that are foreclosed

through merger conditions and protecting local businesses in the Namibian economy.²⁵ It is also the mandate of the NaCC to protect local businesses and ensure that they are competitive alongside foreign larger, and multinational businesses. SACU has reached enormous milestones by integrating economic activities of the region, especially in the areas of trade cooperation.²⁶ There has been an increase in the number of cross-border transactions and business concentrations, which have proven that there is a need to regulate these business transactions and particularly mergers or acquisitions, in order to protect Namibian consumers and local businesses.²⁷ Merger and acquisition regulation is necessary to safeguard the Namibian economy from anti-competitive behaviour where transactions occur at an international level and their effects are felt in the Namibian economy.²⁸

Lastly, most merger and acquisition regulations are a replica of larger and more developed countries, which are tailored to specific jurisdictions. Therefore, there is a need to have competition regulation that is suited and tailored, taking into consideration market conditions and characteristics of the Namibian economy and the courts of Namibia adjudicating these competition disputes.²⁹

Conclusion

Article 21(j) of the Constitution³⁰ grants people the freedom to engage in any business practices. Although this is a right enshrined in the Bill of Rights of the Namibian Constitution, this is not an absolute right. Article 21(2) provides that the right to carry on any occupation, trade, or business is to be exercised subject to the laws of Namibia. This means that the right to engage in any business practices is limited and exercised in consideration of the Competition Act, amongst other Acts and regulations. Merger and acquisition regulations ensure that measures are in place to identify anti-competitive effects on different markets or industries in the Namibian economy, investigate these effects, and correct any anti-competitive effects before they occur, as merger and acquisition regulations are forward-looking in nature.³¹ Therefore, regulating mergers and acquisitions has the ability to promote fairness in the Namibian economy, improve the quality of goods and services, contribute to the reduction of poverty, enhance economic development by direct foreign investments in areas that are foreclosed through merger conditions and protecting local businesses in the Namibian economy and having competition regulation that is suited and tailored taking into consideration market conditions and characteristics of the Namibian economy.

⁰³OECD (2020), OECD Competition Trends 2020 <http://www.oecd.org/competition/oecd-competition-trends.htm>.

⁰⁴OECD (2020).

⁰⁵OECD (2020).

⁰⁶Section 2 of the Competition Act No 2 of 2003.

⁰⁷Section 42(1) and 42(2) (a)(b) of the Competition Act.

⁰⁸COMESA Competition Commission. Mergers & Acquisitions. <https://comesacompetition.org/mergers-and-acquisitions/>

⁰⁹EU rules for the control of concentrations are found in Regulation (EC) No 139/2004, which entered into force on 1 May 2004.

¹⁰<https://www.worldbank.org/en/country/namibia/overview>.

¹¹World Bank.

¹²World Bank.

¹³Are merger conditions a viable instrument to achieve non-economic goals in developing countries: the case of Namibia, Bridget Dundee, Presented at the Sixth Annual Conference on Competition Law, Economics and Policy in South Africa. 6-7 September 2012.

¹⁴World Bank.

¹⁵World Bank.

¹⁶World Bank.

¹⁷Section 3 (1) (c) of the Competition Act.

¹⁸https://www.nacc.com.na/cms_documents/820_merger_guidelinesapril16.pdf.

¹⁹Bridget Dundee.

²⁰ICN Merger Working Group: Analytical Framework Subgroup, MERGER REMEDIES REVIEW PROJECT, Report for the fourth ICN annual conference, Bonn – June 2005.

²¹ICN Merger Working Group: Analytical Framework Subgroup.

²²<https://www.concurrences.com/en/dictionary/Remedies#:~:text=Structural%20remedies%20usually%20include%20divestiture,to%20maintain%20certain%20price%20level>.

²³<https://www.concurrences.com/en/dictionary/Remedies>.

²⁴<https://www.concurrences.com/en/dictionary/Remedies>.

²⁵Bridget Dundee.

²⁶Bridget Dundee.

²⁷Bridget Dundee.

²⁸Bridget Dundee.

²⁹Trade and Development Board Trade and Development Commission Intergovernmental Group of Experts on Competition Law and Policy Sixteenth session Geneva, 5–7 July 2017 Item 3 of the provisional agenda Work programme, including capacity-building in and technical assistance on competition law and policy.

³⁰The Constitution of Namibia No 1 of 1990. Article 21 Fundamental Freedoms (1) All persons shall have the right to: (j) practise any profession, or carry on any occupation, trade or business.

³¹Trade and development Board.



08 NEWS ON MERGERS AND ACQUISITIONS CASES

Introduction

The main function of the Commission's Mergers and Acquisitions Division is the enforcement of the provisions of Chapter 4 of the Competition Act No. 2 of 2003 (the Act) through the investigation of mergers and acquisitions; investigations of Chapter 4 contraventions; the monitoring and compilation of compliance reports; provision of technical reports on mergers and acquisitions; provision of policy recommendations on mergers and acquisitions and the provision of advisory opinions. The Division's main function is to investigate and assess whether or not mergers are likely to raise any competition or public interest concerns. The Commission is empowered to prohibit a merger that is likely to substantially prevent or lessen competition or harm public interests. However, it may approve a merger with conditions when a specific remedy can address the competition or public interest concern(s) raised by a proposed merger.

The Board of Commissioners, at its meeting held on the 17th of February 2025, adjudicated on the following proposed mergers, which details are herein included:

1. Sportsdirect.com Retail Limited // S and R Holdco (Pty) Ltd
2. Novus Holdings Limited and Mustek Limited
3. Johannes Homateni George and Erf 3955 (Extension No. 10), Swakopmund, Namibia
4. Walvis Bay Grain Storage (Pty) Ltd and Erf 3732, Walvis Bay, Namibia
5. SQM Australia Pty Ltd (SQM) and Grace Simba Investments (Pty) Ltd (GSI)
6. Alma Terra Mater Investments Namibia (Pty) Ltd // Power House Holdings (Pty) Ltd and The Windhoek Luxury Suites, a division of Red Trading Restaurant Close Corporation
7. Vortex Holdings Namibia (Pty) Ltd and Roots Abbatoir Enterprises (Pty) Ltd

1. Sportsdirect.com Retail Limited and S and R Holdco (Pty) Ltd

Introduction:

On 02 December 2024, the Commission received a notification in terms of Section 44(1) of the Competition Act No. 2 of 2003, (the Act) on the proposed transaction concerning the acquisition by Sportsdirect.com Retail Limited (Sportsdirect) of all the issued shares in S and R HoldCo (Pty) Ltd (Holdsport) from OMPE GP V (Pty) Ltd (OMPE), S and R Management

Co (Pty) Ltd (MIC) and the trustees for the time being of the Holdsport Group Management Trust (IT877/2022(C)) (MIT). Following the implementation of the proposed transaction, S and R Holdco will be controlled by Sportsdirect.

The Primary Acquiring Undertaking, Sportsdirect is a British retail and sports organisation that originally grew from the House of Fraser department store chain and rebranded itself from Sports Direct International to Frasers Group plc in 2019. The acquiring group focuses on three core areas: Sports, Premium, and Luxury, offering a diverse mix of iconic sporting and retail brands.

The Primary Target Undertaking, Holdsport is a vertically integrated group of companies incorporating retail, manufacturing, distribution, and e-commerce focused on the sport, outdoor, and recreation sectors. with the key components comprising: i) Sportsmans Warehouse; ii) Outdoor Warehouse; (iii) Shelflife; and (iv) Performance Brands. Additionally, Holdsport has two distribution centres in the Western Cape and only has two retail stores in Namibia.

Competition analysis: The proposed transaction is a horizontal transaction due to the product overlap, as both parties are involved in the supply of sports footwear and apparel. However, there is no geographic overlap. The transaction is not expected to have a detrimental effect on customers, suppliers, or competitors, as the acquiring group has no business activities or physical presence in Namibia at present. The target undertaking's position relative to its existing competitors in the market will not change.

Public Interest evaluation: The proposed transaction is unlikely to have any negative impact on employment, both the acquirer and target undertaking have no employees in Namibia. Further, the merger does not raise any other public interest concerns.

Conclusion: The proposed transaction was approved without conditions.

2. Novus Holdings Limited and Mustek Limited

Introduction:

On 19 December 2024, the Commission received a notification in terms of Section 44(1) of the Competition Act No. 2 of 2003 (the Act) on the proposed transaction involving the acquisition by Novus Holdings Limited of additional shares in Mustek Limited. Novus Holdings Limited currently holds 35.07% of the shares in Mustek Limited, and it intends to

acquire the remaining 64.93% of the shares.

The Primary Acquiring Undertaking, Novus Holdings Limited, operates as a commercial printing, manufacturing, and packaging business with four specialised printing plants, two packaging manufacturing plants, and a non-controlling interest in a tissue plant in South Africa. Novus Holdings Limited, therefore provides a range of printing services, packaging services, commercial and consumer publishing services, and tissue production.

Primary Target Undertaking, Mustek Limited, operates in the local IT distribution, service, and support segments. In addition, it operates in software licensing, cloud services, and enterprise solutions while retaining its foundation as an IT hardware distributor.

Competition analysis: The proposed merger is unlikely to result in the elimination of an effective competitor, given that it is a conglomerate merger. The transaction results in a change of control, and the market dynamics remain the same. It is therefore improbable that the merger will give rise to any form of tying or bundling. Consequently, the proposed merger will not result in an accretion in market share or market power, nor result in either customer or foreclosure in any markets in Namibia. It is therefore unlikely that the proposed merger would result in the prevention or substantial lessening of competition.

Public Interest evaluation: The proposed merger does not raise concerns about foreclosure through tying and bundling post-merger, as the parties do not offer complementary or substitutable goods, and there are enough competitors in the market after the merger. In addition, since the proposed merger involves a change of control and ownership, it is unlikely to result in a significant reduction of competition or the strengthening or acquisition of a dominant position in the relevant market. The proposed merger is not expected to adversely affect employment, as the target undertaking does not have employees, and the operations of the primary acquiring undertaking will continue as they did prior to the implementation of the proposed merger. There are also no identified public interest concerns arising from the proposed merger.

Conclusion: The merger was approved without conditions.

3. Johannes Homateni George and Ef 3955 (Extension No. 10), Swakopmund, Namibia

Introduction:

On 17 December 2024, the Commission received a notification in terms of Section 44(1) of the Competition Act No. 2 of 2003 on the proposed merger pertaining to the acquisition of an immovable property, Erf 3955, Extension No.10, Swakopmund, Namibia, by Mr. Johannes Homateni George.

The Primary Acquiring Undertaking, Mr Johannes Homateni George, has business interests in health education, training, health care services consultation, and other related services. In addition, the primary acquiring undertaking provides security services, the manufacturing and supply of medical equipment and furniture, consultancy services, software development, stationery and corporate gifts, printing and corporate embroidery.

The Primary Target Undertaking, Erf 3955, Extension 10, Swakopmund,

Namibia, is an immovable property zoned as industrial. The primary target undertaking is currently being leased by the primary acquiring undertaking for training purposes in terms of a lease agreement.

Competition analysis: The transaction is classified as a conglomerate merger. The proposed merger does not raise concerns about foreclosure through tying and bundling post-merger, as the parties do not offer complementary or substitutable goods, and there are enough competitors in the market after the merger. In addition, since the proposed merger involves a change of ownership, it is unlikely to result in a significant reduction of competition or the strengthening or acquisition of a dominant position in the relevant market.

Public interest evaluation: The proposed merger is not anticipated to adversely affect employment, as the primary target undertaking does not have any employees.

Conclusion: The proposed transaction was approved without conditions.

4. Walvis Bay Grain Storage (Pty) Ltd and Erf 3732, Walvis Bay, Namibia

Introduction:

On 13 December 2024, the Commission received a notification in terms of Section 44(1) of the Competition Act No. 2 of 2003 (the Act) on the proposed transaction which concerns the acquisition of an immovable property, Erf 3732, Walvis Bay, by Walvis Bay Grain Storage (Pty) Ltd (Walvis Bay Grain Storage) from Petrus Johannes van Niekerk.

The Primary Acquiring Undertaking, Walvis Bay Grain Storage (Pty) Ltd, a subsidiary of Namib Mills Investment Group Trust, is involved in various activities, namely, grain milling activities (such as maize meal, mahangu, flour, pasta, bread, instant porridge and animal feeds) and packaging of sugar and rice. It is also a processor and marketer of chicken in Namibia and operates in the local retail and wholesale channels. The acquiring group is active in Namibia, South Africa, Zambia, and Australia.

The Primary Target Undertaking, Erf 3732, Walvis Bay, is an immovable property zoned as industrial, owned by Petrus Johannes van Niekerk. The target undertaking is leased to a subsidiary of the acquiring group, Namib Mills (Pty) Ltd.

Competition analysis: The proposed merger is classified as a conglomerate merger based on the fact that the merging parties are active in different markets. The merger does not raise the concerns associated with conglomerate mergers, as it is an acquisition of immovable property already leased by the acquiring undertaking. Furthermore, the acquiring group will not be acquiring and/or strengthening a dominant position in the market for immovable properties zoned industrial in Walvis Bay, as the target undertaking equates to 0.17% of the land zoned as light industrial and industrial in the municipality of Walvis Bay. Post-merger, the acquiring undertaking will have less than 1% market share in the relevant product market. Furthermore, the proposed merger is unlikely to substantially lessen or prevent competition in any other market.

Public Interest evaluation: The proposed merger will not affect employ-



ment, as the target undertaking does not have employees, there is no overlap in the activities of the merging parties post-merger, and the acquiring undertaking intends to operate on the same principles as the target undertaking.

Conclusion: Based on the findings, the proposed merger is unlikely to result in the prevention or the substantial lessening of competition. Additionally, the merged undertaking is unlikely to acquire or strengthen a dominant position in the market, and the proposed merger does not raise public interest concerns. Therefore, the merger was approved unconditionally.

5. SQM Australia Pty (Ltd) (SQM) and Grace Simba Investments Namibia (Pty) Ltd (GSI)

Introduction:

On 12 December 2024, the Commission received a notification in terms of Section 44(1) of the Competition Act No. 2 of 2003 (the Act) on the proposed merger, which entails the acquisition by SQM Australia Pty Ltd (SQM) of Grace Simba Investments (Pty) Ltd (GSI) in terms of the earn-in agreement between the parties. Following the implementation of the proposed transaction, SQM will make investments of a total expenditure over three and a half years in three different stages to attain up to 50% ownership in GSI.

The Primary Acquiring Undertaking, the SQM Group, consists of global mining companies and is present in the sustainable development of health, food, technology, and clean energies. The group's five main busi-

ness lines are Specialty Plant Nutrition, Iodine and Derivatives, Lithium and Derivatives, Potassium and Solar Salts.

The Primary Target Undertaking, Grace Simba Investments, is the holder of the Lithium Ridge Mining Licence, Mining Licence No. 133 (ML 133), and was established to progress exploration for lithium within the area of ML133.

Competition analysis: The proposed transaction is a horizontal transaction due to the product overlap, as both parties are involved in lithium exploration. However, there is no geographic overlap, and the proposed transaction is not expected to have a detrimental effect on customers, suppliers, or competitors, as the acquiring group has no business activities or physical presence in Namibia at present. Further, the primary target undertaking is currently engaged in mineral exploration activities, with no revenue generated from operations in Namibia thus far. The target undertaking's position relative to its existing competitors in the market will not change, as merging parties will not acquire a dominant position in the market post-merger. No competitors will be eliminated, as the acquirer is currently leasing the target property.

Public Interest evaluation: The merger is unlikely to have any negative impact on employment, as both the acquirer and target undertaking have no employees in Namibia. Further, the merger does not raise any other public interest concerns.

Conclusion: The proposed transaction is unlikely to substantially lessen or prevent competition or result in any undertaking acquiring or strength-

ening a dominant position. Further, no public interest concerns are likely to arise from the implementation of the merger. The proposed transaction was unconditionally approved.

6. *Alma Terra Mater Investments Namibia // Power House Holding (Pty) Ltd and The Windhoek Luxury Suites, a division of Red Trading Restaurant Close Corporation*

Introduction:

On 18 December 2024, the Commission received a notification in terms of Section 44(1) of the Competition Act No. 2 of 2003 (the Act) involving Alma Terra Mater Investments Namibia (Pty) Ltd in terms of the Sale of Shares Agreement and Sale of Business Agreement, acquiring the entire issued share capital in Protek Electronics (Pty) Ltd and in the immovable property owned by Protek Electronics (Pty) Ltd. Additionally, Power House Holdings (Pty) Ltd will acquire the Windhoek Luxury Suites, a ring-fenced business of Red Trading Restaurant Close Corporation, which operates and manages an accommodation establishment.

The First Primary Acquiring Undertaking, Alma Terra Mater Investments Namibia (Pty) Ltd, is registered as a vehicle for investment purposes in Namibia and does not sell any products or provide any services.

The Second Primary Acquiring Undertaking, Power House Holdings (Pty) Ltd, is a dormant company that does not sell any products or provide any services and does not own or control any undertakings.

The First Primary Target Undertaking, Protek Electronics (Pty) Ltd, is a property-owning company. It does not have customers in Namibia, save for Red Trading Restaurant Close Corporation, which uses the leased property to render accommodation solutions.

The Second Primary Target Undertaking is The Windhoek Luxury Suites, a division of Red Trading Restaurant Close Corporation.

Competition analysis: The proposed merger will not have an impact on the prevailing competitive conditions in the market, and the current status quo with regards to the relevant market and the respective market shares are not likely to change because the acquiring group has no business activities or physical presence in Namibia at present. The target undertaking's position relative to its existing competitors in the market will not change.

Public Interest Evaluation: The merger is unlikely to have any negative impact on employment, as all employees are to be rehired. However, due to the fact that the employees are not party to the agreements, the Commission proposes employment conditions. Further, the merger does not raise any other public interest.

Conclusion:

The Commission approved the merger subject to an employment condition:

- No merger-specific retrenchments by the merged undertaking for a period of three years after the Implementation Date.
- As a result of the submission by the Merged Undertaking, Power House Holdings (Pty) Ltd shall take over the employment agreements of 17

(seventeen) of the employees post-merger and shall re-employ all 17 (seventeen) employees of the Second Primary Target Undertaking. The merged undertaking shall ensure that all 17 (seventeen) existing employees shall not be re-employed on terms less favourable than what exists and prevails on the approval date. The remaining 3 (three) employees will continue to be employed by the Second Primary Target Undertaking.

- The condition shall not apply to any employee who may, in the ordinary course of business, be fired, be dismissed, retire, or resign.

7. *Vortex Holdings Namibia (PTY) Ltd and Roots Abattoir Enterprises (PTY) Ltd*

Introduction:

On 16 December 2024, the Commission received a notification in terms of Section 42 of the Competition Act No. 2 of 2003 (the Act) involving the acquisition by Vortex Holdings Namibia of 50% of the shareholding in Roots Abattoir Enterprises (Pty) Ltd. Preceding this proposed transaction, Vortex Holdings Namibia acquired 50% of the shareholding in Roots Abattoir Enterprises (Pty) Ltd and Roots Farming Enterprises (Pty) Ltd (Roots Farming). The current transaction constitutes the remainder of the 50%, while the parties inform that the previous transaction has not yet been implemented.

The Primary Acquiring Undertaking, Vortex Holdings (Pty) Ltd, is an investment vehicle that holds a non-controlling interest in a to-be-established beef export processing abattoir.

The Primary Target Undertaking, Roots Abattoir Enterprises (Pty) Ltd, is involved in the slaughtering and processing of chickens.

Competition analysis: The proposed transaction will have no effect on market concentration, and therefore, the current competitive conditions in the relevant market will prevail post-merger. Accordingly, the merging parties do not operate in the same market – the proposed transaction therefore does not give rise to any integrations. The proposed transaction will therefore not substantially lessen or prevent competition in the relevant market.

Public Interest Evaluation: The proposed transaction will have no negative effect on employment insofar as the target undertaking is concerned, as there will be no job losses, including redundancies and retrenchments, as a consequence of the implementation. It is expected that increased production capacity will give rise to job creation. Furthermore, no other public interest concerns were identified.

Conclusion: The merger was approved without conditions.

Important notice regarding merger determinations:

Note that the Commission has the authority, in terms of Section 48(1) of the Act, to revoke a decision approving the implementation of a proposed merger if-

- a) the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
- b) any condition attached to the approval of the merger that is material to the implementation is not complied with.*

UNDERSTANDING THE NAMIBIA PRIVATE HEALTHCARE SECTOR

Economic Discussion Paper Article

By Strategy and Research Division

Introduction

As a Member State of the World Health Organisation, Namibia has expressed its commitment to achieving Universal Health Coverage. The country's health system at present is, however, characterised by high inequalities among population groups, based mainly on employment status and income levels. Private healthcare, which covers a small minority of the population, accounts for 38 percent of the country's total healthcare financing pool, with the government managing 49 percent of the pool, whereas the remaining 13 percent can be attributed to other providers such as mission services.

The distinction between public and private healthcare

The country's health sector is largely divided between public and private healthcare, where the public sector provides access to health services throughout the country as part of the country's socio... and right of access to health as enshrined in the constitution. In contracts, the provision of private healthcare services is provided by various economic agents and is characterised by the following economic features:

- **Ownership** - Private healthcare operates outside the public sector and is not under direct control of the state; it is owned by individuals, families, and corporations, but not by the state.
- **Motive** - including philanthropic and not-for-profit entities, faith-based organisations, non-governmental organisations, and civil society organisations; or commercial, which is for profit.
- **Training** - Formally trained professionals such as medical doctors, nurses, and pharmacists, or informally trained healthcare providers,

including traditional healers, etc.

- **Geography** - The scope of a private healthcare organisation can either be domestic or international, depending on the extent of the population that it serves or covers.

The majority of industries are subjected to several pieces of legislation aimed at guiding the operation of the industry. Many are related to health and safety as well as guide the interaction between different market players within the sector to ensure the most efficient outcome. There is also regard for how regulation in the sector impacts competition within the sector. For this reason, in understanding the market, it is important to understand not only the various commercial players within the sector but also the various regulatory institutions and laws that govern the operations of the sector.

Various Market Players

There are various interrelated markets and role-players, including governing bodies and regulatory institutions; the regulatory framework; the funders of private healthcare insurance and medical aid funds/schemes; private hospitals and healthcare facilities; private healthcare professionals; professional associations, societies, or groups that represent members' interests. For instance, there are professional associations for doctors and dentists, nurses, optometrists, pharmacists, lab staff, and the associations for the hospitals and other private healthcare facilities.

Regulatory and Governing Bodies

Several government institutions exist in the country to oversee and regulate health service delivery to the Namibian people. These include:

- The Ministry of Health and Social Services (MoHSS), which has a mandate to "oversee and regulate public, private and non-governmental sectors in the provision of quality health and social services,

ensuring equity, accessibility, affordability and sustainability” (MoHSS Strategic Plan 2017-2022);

- The Ministry of Finance (MoF) is responsible for the administration of the Medical Aid Funds Act (Act No. 23 of 1995) and is therefore the oversight and line ministry of the Namibian Medical Aid Fund (NMAF) as well as the Public Service Employees Medical Aid Scheme (PSEMAS); and
- The Ministry of Industrialisation and Trade (MIT) is mandated to develop and manage Namibia’s economic regulatory framework, promote economic growth and development through the formulation and implementation of appropriate policies to attract investment, increase trade, and develop and expand the country’s industrial base.

Regulatory institutions and legislation

These are the statutory entities that oversee and supervise the regulatory environment in the private healthcare sector, including:

- The Namibia Competition Commission is tasked with the responsibility of regulating market competition across all sectors of the economy. In terms of the Competition Act No. 2 of 2003, the Commission is mandated to administer the competition law by dealing with the following activities: investigating restrictive business practices, investigating abuse of dominant positions, analysing mergers and acquisitions, and undertaking competition research and advocacy. The activities of the Commission are designed to safeguard and promote competition in the Namibian economy to achieve the objectives of the competition law, which are to:
- The Namibian Financial Institutions Supervisory Authority (NAMFISA), which approves and registers medical aid funds and, more particularly, approves financial rules, which is also known as prudential supervision.
- The Health Professions Council of Namibia (HPCNA) regulates the practice of all healthcare professionals in Namibia. All healthcare providers are required to register with their respective professional councils (e.g., medical and dental council, nursing council, pharmacists’ council, social workers’ council, allied health council) in order to practice in the professions. The profession council also defines and determines the scope of service of all doctors, dentists, nurses, pharmacists, social

workers, etc, in close collaboration and coordination with the MoHSS and NMAF.

- The Namibia Medicines Regulatory Council (NMRC) is a statutory body established in terms of the Medicines and Related Substances Control Act, Act 13 of 2003, to regulate the use of medicines in Namibia. The NMRC is appointed by the minister responsible for health. The NMRC’s mission is to serve the public interest by developing and maintaining internationally acceptable standards of medical control.
- The Namibian Medical Aid Fund (NMAF) is a statutory body, established under the provisions of section 10 (3) of the Medical Aid Funds Act (No. 23 of 1995), to control, promote, encourage and co-ordinate the establishment, development and functioning of these funds in Namibia.

The Regulatory Framework in the provision of private healthcare

There are numerous pieces of legislation that constitute a regulatory framework that directs the market behaviour of respective market players, as detailed below:

- Allied Health Professions Act 2004 (Act No. 7 of 2004)
- Medical and Dental Act (Act No. 10 of 2004)
- Medicines and Related Substances Control Act, Act 13 of 2003
- Pharmacy Act, 2004 (Act No. 9 of 2004)
- Nursing Act, 2004 (Act No. 8 of 2004)
- Social Work and Psychology Act, 2004 (Act No. 6 of 2004)
- Hospitals and Health Facilities Act 36 of 1994
- Atomic Energy and Radiation Protection Act No. 5 of 2005

Funders of private healthcare goods and services and administrators

The main players in the funders market of private healthcare services are medical aid funds, medical aid fund administrators, and brokers. Medical Aid Funds in Namibia - There are currently eight (8) registered medical aid funds, of which five are open and three are closed medical aid funds, covering up to 187,987 members, as per Table 2 below:

Table 2: List of open and closed medical aid funds in Namibia

Open medical aid funds	Closed medical aid funds
Namibia Medical Care (NMC)	Bankmed Namibia*
Namibia Health Plan (NHP)	Napotel Medical Aid Fund
Nammed Medical Aid Fund	GemHealth Medical Scheme
Heritage Health Medical Aid Fund Namibia	
Renaissance Health Medical Aid Fund (RMA)	

The product provided by third-party administrators and managed care companies is the outsourced management of medical scheme operations. As these functions can be provided by schemes on an in-sourced basis, competitors include other third-party administrators and schemes. Any medical scheme, whether open or closed, can choose at any point to insource or outsource its administration and managed care. Third-party administrators are for-profit entities that provide a variety of services, such as managing member records, contributions, claims, financial reports, information and data control, and actuarial services. At the time of conducting the study, there were four accredited administrators in terms of the Medical Aid Funds Act No. 23 of 1995, namely: Paramount, Medscheme, Methealth Namibia, and Prosperity Health Namibia.

Conclusion

This type of discussion paper lays a good foundation for understanding the market for private healthcare in Namibia. A study that outlines the basics of the industry allows the Commission to take stock of the dynamics of competition within the industry. This aids the Commission in dealing with cases arising from complaints and merger activities.

Disclaimer: The views expressed in this paper are those of the author(s) and do not necessarily reflect the views or policies of the Namibian Competition Commission (NaCC) and its Board of Commissioners. The NaCC does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequences of their use. Terminology used may not necessarily be consistent with NaCC official terms.



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