**COMMISSION GRANTS CONDITIONAL EXEMPTION TO TULLOW KUDU LIMITED - NAMCOR - CIECO E&P (NAMIBIA) CO, LIMITED**

***The Consumer News Magazine conducted an interview with the Namibian Competition Commission to get more insight into the Commission’s decision to grant a conditional exemption to Tullow Kudu Limited, NAMCOR and CIECO E&P (NAMIBIA) CO, LIMITED. The Technical Advisor to the CEO, Ms Bridget Dundee provides the following responses to the pressing questions posed by the publication:***

**Consumer News (CN):** **Give us a brief background of the Competition Commission’s exemption provisions and the reasons for such provisions.**

**Bridget Dundee (BD):** The Act recognises that certain practices that harm competition may be justifiable or may have economic benefits that outweigh the anticompetitive effects. As such, the Act allows undertakings involved in such practices to apply for exemption from the restrictive business practices and abuse of dominance provision of the Act. In addition, a professional association whose rules contain a restriction that has an effect on competition in a market may apply to the Commission for an exemption. In essence, any business or association of businesses or professional association may apply to the Commission to be exempted from the provisions of the Act.

**CN: What are the areas that the Commission consider when analysing such exemption applications?**

**BD:** For an exemption that relates to restrictive business practise to be approved it must be established that such conduct would lead to maintenance or promotion of exports, enable small undertakings owned or controlled by historically disadvantaged persons to become competitive; improve or prevent a decline in production or distribution of goods or the provision of services; promote technical or economic progress or stability in any industry designated by the Minister (after consultation with the Minister responsible for that industry); and/or lead to the benefit for the public which outweighs the resultant lessening of competition.

**CN: When will an exemption be granted?**

**BD:** An exemption will be granted if there are exceptional and compelling public policy justifications that the conduct that the parties will engage in during the period of exemption will contribute to the Namibian economy.

**CN:** **Give us a background of the decision of the Commission to grant a conditional exemption to Tullow - Kudu Limited- Namcor- Cieco E&P (Namibia) Co, Ltd.**

**BD:** The Commission received an application for exemption from NAMCOR, Tullow Kudu and CIECO E&P (Namibia) CO, Ltd (“applicants”). The Applicants are joint-holders of a 25-year Production Licence 003 in terms of which they can explore for and produce natural gas within the licence area, inclusive of the Kudu Gas Field (Kudu). The applicants propose developing the Kudu natural gas field (“Kudu”) where commercial quantities of natural gas have been discovered. The gas produced is proposed to be sold to the Kudu Power Company (Proprietary) Limited (Kudu Power).

**CN: Why did they have to apply for exemption to the Commission?**

**BD:** The joint operating agreement limits the ability of the Applicants to act independently. It results in the Applicants agreeing on a common selling price of natural gas, controlling production and market outlet and access as well as allocating customers and areas of trade, thus contravening the provisions of section 23 of the Competition Act.

**CN: Explain the decision of the Commission**

**BD:** The Commission granted a conditional exemption for 15 years, renewable at the discretion of the Commission. The Commission found that the market for the production and processing of gas, as well as the market for the transportation of gas via pipeline, is not likely to be one in which competition is effective in constraining the market power of a joint venture entity and this may be an unavoidable outcome in a situation where there are considerable costs associated with entering the market and establishing a viable and sustainable business. In particular the Commission accepts that this project is not feasible without the joint arrangements envisaged.

**CN: What are the conditions attached to the exemption?**

**BD:** The Commission recognised the possibility of third party access to the pipeline, in the future. It is therefore a condition of the exemption that the Applicants submit to the Commission, at the end of the second year of operation, criteria for granting third party access to the pipeline.

**CN: What were the factors the Commission considered in granting the exemption with conditions?**

**BD:** The Commission looked at the nature of the conduct of the applicants, the competitive effects of the conduct, the competitive gains as well as the public interest effects of granting such an exemption. An important outcome of the Commission’s evaluation is recognition of the fact that there are considerable barriers to entry and substantial economies of scale in production and processing that limits significantly the extent to which competition can act as a constraint on the positions of incumbents. This is particularly so in the case of new developments where initial high setup costs and entry barriers must be overcome under conditions of risk (for example in exploration) and business uncertainty (e.g., regarding whether there will be sufficient demand for the gas product in downstream markets). Although the arrangements will control production the rationale for the joint venture is to enable the establishment of an entity that will bring to the Namibian economy a product not previously available.

**CN: What are the competitive benefits to the economy that may arise from this project?**

**BD:** The Commission believe that the joint venture arrangement has enabled the establishment of an “anchor project”, an important foundation for the development of an upstream gas production industry. This is made commercially feasible by the establishment of an anchor customer in the form of Kudu Power. The Kudu Gas project will result in an entity that will produce gas and that will enable a downstream electricity-producing sector. This constitutes an increase in productive activity hitherto unavailable to the Namibian economy. In addition, it is envisaged that there will be an increase in exports of electricity that represents a considerable pro-competitive benefit.

**CN: What is the importance of an anchor project such as this one?**

**BD:** The exploration, production and transmission of natural gas are a risky and expensive business activity usually undertaken through joint ventures and other partnerships as opposed to individual companies. This is to ensure that the risks associated with the project are spread among a number of firms and that companies can pool their financial resources. Consistent with international best practices the Commission envision the creation of an anchor project supported by an anchor customer on the basis of a joint venture arrangement that allows for sufficient funds to be raised and collaboration among appropriately experienced and skilled partners who are able to earn a sufficient return on their investments.

**CN: What will be the role of the Commission now that the exemption was granted?**

**BD:** It will be important for the Commission to monitor conditions in the market to ensure that the benefits of the Kudu Gas to Power project are not outweighed by any restrictions on competition that may arise in future. Another concern is with the extent of sharing of commercially sensitive information facilitated in the terms and conditions of the JOA. While this may be unavoidable at this early developmental stage it will be important to safeguard against any potential misuse of this information for purposes of restricting competition as the market develops in future.

**CN: What will be the economy wide impact of your decision and can we expect similar decisions in the future?**

**BD:** It is a very important project for Namibia’s development trajectory, promising to increase the country’s electricity production capacity at a time when the demand for electricity outstrips available supply.

**CN: Any other comments?**

**BD:** The Commission encourages businesses to comply with the Competition law. Our strategic vision is to create a culture of competition in the market for the benefit of the economy. It is important for businesses to adhere to the competition law. The Commission welcomes your queries on competition related matters and encourage businesses to familiarise themselves with the Competition Act.