

# **Namibian Competition Commission Gala Dinner**

**5 December 2013**

## **Statement on behalf of Competition Law Forum re Stakeholders' perspective on competition law in Namibia**

**By Hans-Bruno Gerdes**

### 1. GREETING / INTRODUCTION

Good evening –

- Director of ceremonies;
- Chairperson and Members of the Namibian Competition Commission;
- Invited guests;
- Ladies and Gentlemen

The Competition Law Forum (CLF) was established shortly after the dawn of the implementation of the Competition Act 2 of 2003 and amidst the increasing prominence of competitive business environment as a major issue on the global and regional trade agenda – a number of commercial legal practitioners resolved to informally group and meet on a regular basis to facilitate the sharing of experiences on matters relating to competition law and discuss issues of competition relevance and really to learn from and among one another.

I think we are fortunate that in Namibia there has been established and exists a good relationship between the CLF and the NaCC that has been fostered through regular meetings and open dialogue on relevant issues. We, as the CLF, certainly value this relationship and look forward to building this relationship going forward.

As chairperson of the CLF I was invited to address you on stakeholders' perspectives on competition law in Namibia. I can only really address you on our own experiences as legal practitioners that we have built through the practical implementation and dealing with the Act and the NaCC and it is based on these experiences that I share the following with you but do not speak on behalf of other stakeholders.

## 2. OPPORTUNITIES / STRENGTHS

2013 has been a busy year for the NaCC –

- the NaCC hosted a Competition Week held from 23 to 27 September 2013 which included 2 workshops;
- the NaCC, in collaboration with UNCTAD, embarked on peer review of competition enforcement in Namibia;
- the NaCC, in recognising various shortcomings and challenges created by the current competition regulatory framework, identified the need to review the existing Act and Rules. This review process was initiated earlier this year and we hope to see a motivated drive on the part of the NaCC to steer this review process so as to develop and enhance the existing competition regulatory framework.

We also appreciate that we, the CLF, have been given an opportunity to actively partake in this review process through initial discussions, allowing us to raise various issues, comments, concerns and frustrations with the current regulatory framework.

We have faith that the legal review process will safeguard opportunities for local industry to gain competitive advantage, while at the same time –

- accommodating growth and addressing the development challenges Namibia faces as enshrined in the National Development Plans and Vision 2030;
- recognising that competition policies can serve as an important instrument for the realisation of increased business activities and sustained economic growth in a developing country such as ours;
- recognising the role of foreign investment in Namibia as investment holds the key to economic growth and development and therefore also promoting investment, including foreign investment;
- recognising the importance of institutional design and institutional strengthening;

- ensuring that the value of transaction is taken cognizance of in the calculation of the filing fees so as to ensure that large corporates are able to conduct small transactions especially in outlying areas of our country which is currently being stifled by the prohibitive filing fee and is thus counter-productive.

The end product of the legal review process –

- should also be mindful of Namibia's trading arrangements at regional and multilateral levels that are driven by our national development aspirations and the quest for larger markets and economic space and integration in the global economy; and
- should not stifle the private sector, economic development, or investment (including foreign investment) or hinder industrial policy and development objectives, but underwrite a stable marco-economy and an orderly market which respects the rule of law.

In short, the competition regulatory framework should never give rise to or surmount to becoming a hindrance to economic development, but rather act in ensuring an enabling competitive environment for the Namibian economy to flourish.

However a law, irrespective of how comprehensive or defective it may be, can only be as good as the institutional framework that governs and implements it, which is why we sincerely appreciate the emphasis placed by the NaCC on professional growth through training and capacity building of staff as this contributes to the implementation and enforcement of sound competition law in Namibia which, in turn, translates into actively promoting the competitive market through investigations and prosecution of anti-competitive behaviour, reviewing and approving merger and exemption applications, and disseminating information to businesses, consumers and other stakeholders.

We also experience the NaCC as being notably approachable and acceptable and we can even attest that this view is shared by our colleagues in South Africa and elsewhere. This alone fosters a positive environment that commends the development of competition law in Namibia and fosters a competition culture and advocacy nationwide.

### 3. CHALLENGES / THREATS

Although a lot has been done by the NaCC with regard to public awareness, we continue to see a lack of understanding of competition law and the competition regulatory framework in general in Namibia, even among our colleagues in the legal fraternity.

The NaCC should also be weary of becoming an instrument in the hand of the private sector used by some to file spurious complaints against competitors and thus abusing the NaCC's ability to regulate the conduct of undertakings, anti-competitive arrangements and abuse of dominance behaviour.

### 4. CONCLUDING REMARKS

On behalf of the Competition Law Forum we thank the NaCC for working tirelessly to enhancing the promotion and safeguarding of competition in Namibia.

We wish all members of the NaCC its personnel and all present here as well as their families a blessed festive season and we look forward to working with you in 2014.