



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 22 February 2012

No. 4888

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 41 2012

NOTICE IN TERMS OF SECTION 67(3) OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)

The Namibian Competition Commission, in terms of Section 67(3) of the Competition Act, 2003 (Act No. 2 of 2003), herewith gives notice that it has entered into an agreement with the Bank of Namibia, dated 01 February 2012. (Attached hereto)

In terms of section 2 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997, as amended) the Bank of Namibia is, *inter alia*, required to promote and maintain a sound monetary, credit and financial system and sustain the liquidity, solvency and functioning of that system, as well as to control, supervise and regulate all banking institutions in accordance with the provisions of the Banking Institutions Act, 1998 (Act No. 2 of 1998, as amended) and to provide for the management, administration, operation, regulation and oversight and supervision of payment, clearing and settlement systems in Namibia and to regulate user fees and charges for payment services in accordance with the provisions of the Payment Systems Management Act, 2003 (Act No. 18 of 2003, as amended).

Section 67 of the Competition Act, 2003 (Act No. 2 of 2003) mandates the Namibian Competition Commission with the responsibility to negotiate cooperation agreements with any regulatory authority with which it shares concurrent jurisdiction over competition matters in order to ensure consistent application of the principles of the Competition Act.

The purpose of the agreement is to enable the Authorities to coordinate and harmonise the exercise of their jurisdiction over matters of mutual interest and to secure the consistent application of their respective laws governing anti-competitive behaviour, as well as mergers and acquisitions in the banking and payments sector.

H. M. GAOMAB II
SECRETARY TO THE COMMISSION

MEMORANDUM OF AGREEMENT

entered into between

NAMIBIAN COMPETITION COMMISSION
(hereinafter referred to as “**the Commission**”)

and

BANK OF NAMIBIA
(hereinafter referred to as “**the Bank**”)

(Collectively referred to as “**the Authorities**”)

WHEREAS the Namibian Competition Commission is established in terms of section 4 of the Competition Act, 2003 (Act No. 2 of 2003) (“**the Competition Act**”) as an independent body with jurisdiction throughout Namibia in the area of competition in order to safeguard and promote enterprise competition in the Namibian market through the prevention and control of restrictive business practices and the regulation of mergers and acquisitions;

AND WHEREAS the Commission, in terms of section 67 of the Competition Act, has the responsibility to negotiate agreements with any regulatory authority with whom it exercises concurrent jurisdiction over competition matters in order to ensure the consistent application of the principles of the Competition Act;

AND WHEREAS the Bank of Namibia is established in terms of section 2 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997, as amended) (“**the Bank of Namibia Act**”), and is, *inter alia*, required to promote and maintain a sound monetary, credit and financial system and sustain the liquidity, solvency and functioning of that system, as well as to control, supervise and regulate all banking institutions in accordance with the provisions of the Banking Institutions Act, 1998 (Act No. 2 of 1998, as amended) (“**the Banking Institutions Act**”) and to provide for the management, administration, operation, regulation and oversight and supervision of payment, clearing and settlement systems in Namibia and to regulate user fees and charges for payment services in accordance with the provisions of the Payment Systems Management Act, 2003 (Act No. 18 of 2003, as amended) (“**the Payment Systems Management Act**”);

AND WHEREAS the Commission and the Bank seek to co-ordinate and harmonise the exercise of their jurisdiction over matters of mutual interest and to secure the consistent application of their respective laws governing anti-competitive behaviour, as well as mergers and acquisitions in the banking and payments industry on the basis of the procedures outlined in this Memorandum:

NOW THEREFORE THE PARTIES RECORD THEIR AGREEMENT AS FOLLOWS:

PURPOSE AND BASIS OF THE AGREEMENT

1.1 This Memorandum of Agreement establishes a framework in terms of which both the Commission and the Bank will seek to:

- 1.1.1 promote and maintain fair competition and a stable financial environment;
 - 1.1.2 promote co-operation and co-ordination between the parties when dealing with cases of anti-competitive behaviour, as well as to facilitate the treatment of mergers and acquisitions within the banking sector;
 - 1.1.3 minimise the duplication of activities, wherever possible; and
 - 1.1.4 improve understanding of their respective roles by undertaking general studies on the effectiveness of competition within the Namibian banking sector.
- 1.2 This Agreement is entered into in order to facilitate the manner in which the parties will interact and cooperate with each other with the understanding that the laws applicable to each Authority are different, but complementary.
- 1.3 Given the complementarity of the powers and responsibilities of the two Authorities relating to the regulation of competition in the banking institutions sector, the Authorities must consult each other at least annually to discuss competition policy or related issues.
- 1.4 Accordingly, on issues of concurrent jurisdiction and in addressing the matters:
- 1.4.1 The Bank agrees that primary authority should reside with the Commission to promote and safeguard matters of competition in the banking sector, and the Commission after consultation with the Bank shall make the final determination on such matters;
 - 1.4.2 The Commission agrees that primary authority should reside with the Bank to promote safety and stability of banking system and the Bank after consultation with the Commission shall make the final determination on such matters.
- 1.5 This Agreement is entered into on the basis of mutual respect and in a spirit of goodwill, and does not affect the independence, or limit the powers of the two authorities.

2. COMPLAINTS RELATED TO RESTRICTIVE BUSINESS PRACTICES

- 2.1 Where a complaint is lodged pertaining to, or where the Authorities identify a restrictive business practice involving a banking institution, the following process shall be followed:
- 2.1.1 The Authority that receives the complaint (“**the Recipient Authority**”) shall ensure that the complaint is made available to the other Authority within seven (7) working days (excluding weekends and public holidays);
 - 2.1.2 The Recipient Authority shall inform the complainant(s) that the matter will be discussed jointly by the Authorities in order to establish how the complaint is to be dealt with;
 - 2.1.3 The Authorities shall consult with each other and evaluate the complaint in order to establish whether the matter will be dealt with by either or both Authorities;
 - 2.1.4 The Recipient Authority shall advise the complainant(s) of the decision resulting from the joint discussion between the Authorities;
 - 2.1.5 The Recipient Authority shall give the complainant(s) further directions regarding the outcome of the complaint in question;
 - 2.1.6 In the event that the matter is allocated to the Commission, delegates from the Bank may participate in an advisory capacity in the matter, and *vice versa*;

- 2.1.7. The Authorities may establish joint working committees in the event that it is decided to deal with a matter jointly.
- 2.2 Circumstances that may indicate that the Commission will deal with the matter include the following:
- 2.2.1 The complaint relates primarily to Restrictive Business Practices as set out in Parts I and II of the Competition Act;
- 2.2.2 The complaint does not relate to fees and charges related to payment systems services.
- 2.3 Circumstances that may indicate that the Bank will deal with the matter include the following:
- 2.3.1 The complaint primarily relates to fees and charges related to the payment systems services;
- 2.3.2 The complaint primarily relates to a contravention of the Payment System Management Act or the Banking Institutions Act.
- 2.4 The procedure in clause 2.1 is adopted to ensure that proceedings of such complaints are not unduly duplicated and to avoid separate penalties being imposed in respect of the same dispute/ matter.
- 2.5 If it is decided in the consultation process contemplated in clause 2.1 that the Bank will deal with the matter, then the Commission may keep its investigation in abeyance, pending the preliminary outcome of the Bank's enquiry, and *vice versa*.
- 2.6 When the two Authorities consult each other as contemplated in this memorandum, they shall do so free of charge to each other.
- 2.7 During the consultative processes envisaged in this memorandum the two Authorities shall act as expeditiously as circumstances permit and shall on both sides facilitate that the other party achieve a timely response.
- 3. APPLICATION FOR APPROVAL WITH REGARD TO MERGERS AND ACQUISITIONS**
- 3.1 Where a merger transaction requires the approval of both Authorities, the merging parties shall submit separate and concurrent applications to the Commission (in accordance with the Competition Act) and to the Bank (in accordance with the Banking Institutions Act) for their respective consideration.
- 3.2 The Authorities shall thereafter make independent determinations on the basis of the criteria and mandates of their respective legislation. In arriving at these determinations the Authorities may consult each other.
- 4. SHARING OF INFORMATION**
- 4.1 Subject to clause 5, the Authorities may exchange such information as may be necessary to give effect to this Agreement.
- 4.2 Where the situation necessitates close co-operation and information sharing between the Authorities, the situation shall be managed in such a way that each Authority shall endeavour to assist the other to the extent possible.

5. CONFIDENTIALITY AND USE OF INFORMATION

- 5.1 Any confidential information shared pursuant to this Memorandum shall be used only for lawful regulatory purposes.
- 5.2 The Authorities will maintain the confidentiality of all information received from each other and will not disclose any such information without first obtaining the prior written consent of the other Authority and then only in accordance with the conditions (if any) attached by the providing Authority.
- 5.3 All information provided pursuant to this Memorandum will remain the property of the Authority providing such information.
- 5.4 The sharing of confidential information pursuant to this Memorandum is done in reliance upon the foregoing assurances and shall not confer any legal privileges to any person, other than to the parties to this Memorandum.

6. VARIATION OF THE AGREEMENT

No variation of this Agreement shall have any legal effect, nor be binding upon the parties, unless reduced to writing and signed by both parties.

7. EFFECTIVE DATE AND DURATION OF THE AGREEMENT

- 7.1 This Agreement shall come into force upon the date on which it is signed by both parties.
- 7.2 The Agreement shall remain in force until amended or terminated by one month's prior written notice given by either of the parties to the other.

8. PUBLICATION

- 8.1 This Agreement shall be published in the *Gazette* for public information as soon as it has been signed.

9. DOMICILIUM CITANDI ET EXECUTANDI

- 9.1 The parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this Agreement:

9.1.1 **NAMIBIAN COMPETITION COMMISSION**
BPI House
Mezzanine Floor
269 Independence Avenue
Windhoek

9.1.2 **BANK OF NAMIBIA**
71 Robert Mugabe Avenue
Windhoek

THUS DONE AND SIGNED AT WINDHOEK ON THIS 01ST DAY OF FEBRUARY 2012.

L. MURORUA
CHAIRPERSON: NAMIBIAN COMPETITION COMMISSION
