



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

---

N\$15.80

WINDHOEK - 3 March 2008

No. 4004

---

### CONTENTS

	<i>Page</i>
<b>GOVERNMENT NOTICE</b>	
No. 54 Commencement of Competition Act, 2003 .....	1
<b>GENERAL NOTICE</b>	
No. 41 Rules made under Competition Act, 2003 .....	2

---

## Government Notice

---

### MINISTRY OF TRADE AND INDUSTRY

No. 54

2008

#### COMMENCEMENT OF COMPETITION ACT, 2003

Under section 70(1) of the Competition Act, 2003 (Act No. 2 of 2003), I determine that that Act commences on the date of publication of this notice in the Gazette.

**I. NGATJIZEKO**

**MINISTER OF TRADE AND INDUSTRY**

Windhoek, 15 February 2008

---

---

# General Notice

---

## NAMIBIAN COMPETITION COMMISSION

No. 41

2008

### RULES MADE UNDER COMPETITION ACT, 2003

The Namibian Competition Commission, under section 22 of the Competition Act, 2003 (Act No. 2 of 2003), with the approval of the Minister of Trade and Industry, has made the rules set out in the Schedule.

**D.F. REISSNER**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

### SCHEDULE

#### ARRANGEMENT OF RULES

##### Part 1

##### Definitions and Office Functions of Commission

1. Definitions
2. Office hours and address of Commission
3. Time limits
4. Assigning of functions and powers by Commission

##### Part 2

##### Delivery of Documents

5. Delivery of documents
6. Filing of documents
7. Fees
8. Form of notices, applications, certificates and receipts
9. Contents of notices in *Gazette*

##### Part 3

##### Access to Records of Commission

10. Confidential information
11. Right of informants to claim confidentiality or request restricted access
12. Access to information

##### Part 4

##### Complaint Procedure

13. Information concerning alleged restrictive practices
14. Complaints initiated by Commission
15. Complaints by persons other than Commission
16. Notice of proposed investigation and notice to furnish information to, or produce any document or article to, or to appear before Commission
17. Notice of proposed decisions of Commission
18. Notice of action to be taken under section 38 and institution of proceedings in Court

**Part 5**  
**Exemption Procedures**

19. Application to Court for interim order
20. Notice of consent agreement to be submitted to Court for confirmation as an order of the Court and application to Court for confirmation of agreement of settlement as order of the Court
21. Applications for exemption in respect of certain restrictive practices
22. Revocation or amendment of exemption or revocation of certificate of clearance

**Part 6**  
**Merger Procedures**

23. Applications for exemption in respect of intellectual property rights
24. Revocation or amendment of exemptions contemplated in section 30 of Act
25. Applications for exemption in respect of professional rules
26. Revocation or amendment of exemptions contemplated in section 31 of Act
27. Merger parties and participants
28. Merger notice requirements
29. Notification of merger investigations
30. Notice of determination made by Commission in relation to proposed merger
31. Revocation of approval of proposed merger
32. Notice of application for review of decisions of Commission on mergers by Minister and notice of determination
33. Application to Court in terms of section 51

**Part 7**  
**Miscellaneous**

34. Requirements for small undertaking
35. Financial year of Commission
36. Criteria to be applied for determining dominant position in market
37. Notice from chairperson of Commission  
Annexure A: Index to Forms and Forms  
Annexure B: Categories of Small Undertakings

**Part 1**  
**Definitions and Office Functions of Commission**

**Definitions**

**1.** (1) In these rules, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act has that meaning, and -

“certified copy” means a copy of a document certified by a Commissioner of Oaths;

“complaint” means -

- (a) a matter initiated by the Commission under section 33 of the Act; or
- (b) a matter that has been submitted to the Commission under section 33 of the Act, and accepted by the Commission under rule 15(2)(a);

“confidential information” means -

- (a) information in the possession of the Commission in respect of which a claim has been made asserting that it is confidential information; or
- (b) other information in the possession of the Commission that is restricted in terms of rule 10, 11 or 12;

“deliver” means to serve and file;

“file”, when used as a verb, means to deposit with the Commission;

“merger notice” means a notification required in terms of section 44 of the Act;

“public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1990 (Act No. 26 of 1990);

“restrictive practice” means a practice prohibited in terms of Chapter 3 of the Act;

“the Act” means the Competition Act, 2003 (Act No. 2 of 2003);

### **Office hours and address of Commission**

**2.** (1) Subject to subrule (2), the offices of the Commission are open to the public every Monday to Friday, excluding public holidays, from 08:30 to 13:00 and from 13:30 to 15:30.

(2) The Commission may in exceptional circumstances accept documents for filing on any day and at any time within office hours.

(3) Subject to rules 5 and 6, any communication to the Commission, or to a member of the staff of the Commission, may be -

- (a) delivered by hand to The Namibian Competition Commission, at .....  
....., Windhoek, Namibia;
- (b) mailed by post to The Namibian Competition Commission, Private Bag  
....., Windhoek, Namibia;
- (c) communicated by telephone at (09264) (61) .....
- (d) transmitted by fax at (09264) (61) .....; or
- (e) transmitted by electronic mail to .....

### **Time limits**

**3.** (1) If -

- (a) a particular number of days are prescribed for doing an act, the number of days must be calculated by excluding the first day and including the last day;
- (b) the time for doing an act expires on a public holiday, a Saturday or a Sunday, the act may be done on the next day that is not a public holiday, a Saturday, or a Sunday;

- (c) a particular number of days are prescribed for doing an act, the number of days must be calculated by excluding the first day and including the last day, but public holidays, Saturdays and Sundays are not included in the calculation of days.

(2) On good cause shown, the Commission may condone late performance of an act in respect of which these rules prescribe a time limit, other than a time limit that is binding on the Commission itself.

### **Assigning of functions by Commission**

4. The Commission may in writing assign any function of the Commission to a member of the staff of the Commission, either generally or in connection with a particular matter.

## **Part 2 Delivery of Documents**

### **Delivery of documents**

5. (1) A notice or document that is required to be delivered may be filed or served in any way permitted or required by the Act or these rules.

(2) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in the Act or these rules, the person concerned may apply to the Commission for an order of substituted service.

(3) Subject to rule 2(2), if a date for the delivery of a document in terms of or under the Act or these rules falls outside the office hours of the Commission as set out in rule 2(1), that document is deemed to have been delivered on the next business day.

(4) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out -

- (a) the name, address, and telephone number of the sender;
- (b) the name of the person to whom it is addressed, and the name of that person's representative, if it is being sent to the representative of a person;
- (c) the date and time of the transmission;
- (d) the total number of pages sent, including the cover page; and
- (e) the name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

(5) Despite this rule, if, in terms of rule 7, a filing fee is required in respect of a document that has been filed, that document is deemed to have been filed -

- (a) on the date and at the time of delivery, or determined by subrule (2), if applicable, provided that the filing fee is paid to the Commission within 5 days of that time; or
- (b) when the filing fee is received by the Commission, if later.

**Filing of documents**

6. (1) The Commission must assign distinctive case numbers to each -

- (a) complaint;
- (b) application; or
- (c) merger notice.

(2) The Commission may combine two or more complaints under a common investigation if they concern substantially the same conduct by the same undertaking.

(3) The Commission must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.

(4) The Commission may refuse to accept a document, subsequently filed in respect of the same proceedings, that is not properly marked with the assigned case number.

**Fees**

7. (1) The Commission may not charge a fee to any person for filing a complaint.

(2) Subject to subrule (3), the fee for filing an application with the Commission -

- (a) for a single exemption is N\$5 000, plus an annual fee, payable in advance, equal to N\$500 times the number of years for which the exemption is granted;
- (b) for a category exemption is N\$100 000, plus an annual fee, payable in advance, equal to N\$1 000 times the number of years for which the exemption is granted; or
- (c) for an exemption contemplated in section 31 of the Act is N\$100 000.

(3) If an application is refused in terms of rule 21(4)(b), or rule 23(4)(b) or an advice is given in terms of rule 21(6), the Commission must refund the applicant the annual fee paid in respect of that application.

(4) The fee for filing a merger notice is -

- (a) N\$1 500, if the combined figure is valued below N\$50 million;
- (b) N\$5 000, if the combined figure is valued at or above N\$50 million, but less than N\$65 million; or
- (c) N\$25 000, if the combined figure is valued at or above N\$65 million, but less than N\$75 million; or
- (d) N\$50 000, if the combined figure is valued at or above N\$75 million, but less than N\$100 million;
- (e) N\$125 000, if the combined figure is valued at or above N\$100 million, but less than N\$1 billion;

- (f) N\$250 000, if the combined figure is valued at or above N\$1 billion, but less than N\$3,5 billion; or
  - (g) N\$500 000, if the figure is valued at or above N\$3,5 billion.
- (5) For the purposes of subrule (4) -
- (a) “combined figure” means the greater of -
    - (i) the combined annual turnover in Namibia of the acquirer and the target;
    - (ii) the combined assets in Namibia of the acquirer and the target;
    - (iii) the annual turnover in Namibia of the acquirer plus the assets in Namibia of the target; or
    - (iv) the assets in Namibia of the acquirer plus the annual turnover in Namibia of the target; and
  - (b) annual turnover and assets must be calculated in accordance with the notice published by the Minister in terms of section 24 of the Act.
- (6) For the purpose of subrule (5) -
- (a) “acquirer” means the total of all the undertakings that are acquiring undertakings in respect of that merger, as defined in Rule 27(1)(a); and
  - (b) “target” means the total of all the undertakings that are target undertakings in respect of that merger, as defined in Rule 27(1)(b).
- (7) The Commission may charge a fee of N\$1 per A4-size page or part thereof to any person wishing to copy a record in the possession of the Commission and N\$2 each for the Commission’s certification on copies of documents.

### **Form of notices, applications, certificates and receipts**

**8.** If a notice, application, certificate or receipt is required in terms of the Act or these rules, the document must be substantially in the form of the appropriate Form contained in Annexure A.

### **Contents of notices in *Gazette***

**9.** If the Commission is required, in terms of the Act or these rules, to publish a notice in the *Gazette*, that notice must contain at least the following information -

- (a) the name of any undertaking or other person directly affected by the notice;
- (b) the file number assigned by the Commission to the relevant matter;
- (c) the provision of the Act or rules in terms of which the notice is required;
- (d) a brief and concise description of the nature of the relevant matter;

- (e) if the notice invites submissions, the last date on which submissions may be received;
- (f) if the notice reports a decision -
  - (i) a brief and concise description of the nature of the relevant decision;
  - (ii) a statement indicating whether reasons for the decision have been published, and if so, how a copy of those reasons may be obtained; and
  - (iii) a statement of any right of review of that decision, including the period during which a review may be lodged;
- (g) the name, address, and contact numbers of the person in the Commission responsible for publishing the notice.

### **Part 3**

#### **Access to Records of Commission**

##### **Confidential information**

**10.** (1) A complaint and any information received by the Commission during its investigation of the complaint are regarded confidential information.

(2) An application and any information received by the Commission during its consideration of the application, or revocation of an exemption granted to the applicant, are regarded confidential information only to the extent provided for in rule 11.

(3) A statement relating to merger information and any information annexed to it, or received by the Commission during its investigation of that merger, are regarded as confidential information.

##### **Right of informants to claim confidentiality or request restricted access**

**11.** (1) When submitting information to the Commission, a person may identify information that the person claims to be confidential information, but must support that claim at the same time with a written statement in the form of Form 1, explaining why the information is confidential.

(2) If a person makes a claim in terms of subrule (1), the Commission may agree to be bound by that claim without determining whether or not the information is confidential information.

(3) Information that is the subject of a claim in terms of subrule (1) is confidential information -

- (a) from the time that the claim is made, until the Commission has determined whether it is confidential information; and
- (b) only to the extent that the Commission has accepted the claim upon determination under paragraph (a).

(4) If a person has requested under rule 13(2) that the Commission treat his or her identity or any other person's identity as confidential information -



- (a) the Commission must accept that request; and
- (b) that information is restricted unless the person subsequently waives the request in writing.

### **Access to information**

**12.** (1) Any person may inspect or copy upon payment of the fee prescribed for a copy in rule 7(7), any record of the Commission's proceedings in terms of Chapters 3 or 4 of the Act -

- (a) if it is not confidential information; or
- (b) if it is confidential information, to the extent permitted, and subject to any conditions imposed by this rule or an order of the Court.

(2) In a particular complaint the Commission may release to the respondent confidential information, other than confidential information relating to -

- (a) a possible agreement of terms of an appropriate order; or
- (b) the consent of a complainant for an order to include an award of damages.

(3) In addition to the provisions of subrule (1) and (2), the Commission may release confidential information to, or permit access to it by, the following persons -

- (a) the person who provided that information to the Commission;
- (b) the undertaking to whom the confidential information belongs;
- (c) a person who requires it for a purpose mentioned in section 55(2)(a) or (b) of the Act;
- (d) a person mentioned in section 55(2)(c) of the Act;
- (e) the Minister, if the information concerns a merger; or
- (f) any other person, with the written consent of the undertaking to whom the information belongs.

(4) If the Commission submits any information to the Minister, the Commission must identify to the Minister any information included in its submission -

- (a) in respect of which a claim has been made in terms of rule 11(1), that has not yet been determined by the Commission; or
- (b) that has been finally determined to be confidential information.

(5) Subject to subrule (6), when making any decision in terms of the Act or these rules, the Commission may take confidential information into account in making its decision.

(6) If the reasons of the Commission for a decision contemplated in subrule (5) would reveal any confidential information, the Commission, after publishing its decision in the matter, must provide a copy of the proposed reasons to the party concerned at least 10 days before the publications of the reasons.

## **Part 4 Complaint Procedures**

### **Information concerning alleged restrictive practices**

**13.** (1) A person may provide information concerning an alleged restrictive practice to the Commission in any manner and at any time, whether or not a complaint has been initiated concerning those allegations.

(2) A person who provides information in terms of subrule (1) may request that the Commission treat his or her identity as confidential information, but that person may be a complainant in the relevant matter only if he or she subsequently waives the request in writing.

### **Complaints initiated by Commission**

**14.** The Commission may initiate a complaint at any time -

- (a) in respect of a matter that is within its power; and
- (b) within the time period contemplated in section 57 of the Act.

### **Complaints by persons other than Commission**

**15.** (1) A person other than the Commission may submit a complaint to the Commission by filing a completed Form 2, if -

- (a) the complaint is in respect of a matter that is within the scope of the Act;
- (b) the complaint is, in terms of section 57 of the Act, done within three years from the date the infringement has ceased;
- (c) the complaint is not frivolous; and
- (d) the Commission has not initiated or has not already accepted a complaint in respect of that practice.

(2) Upon receiving a complaint in terms of subrule (1), the Commission may -

- (a) accept it as a complaint in terms of section 33 of the Act; or
- (b) notify, in the form of Form 3, the person who made the complaint that the Commission has decided not to conduct an investigation, and inform the person of the reasons for that decision.

(3) A person whose complaint under subrule (1) has been accepted may withdraw that complaint at any time before the matter has been referred to the Court as contemplated in section 38 of the Act, if applicable, but the Commission may continue to investigate that matter as if the Commission had initiated the complaint as from the date the complaint was originally accepted.

### **Notice of proposed investigation and notice to furnish information to, or produce any document or article to, or to appear before Commission**

**16.** (1) If the Commission, on its own initiative or upon receipt of information or a complaint from any person, decides to conduct an investigation as contemplated in

section 33, it must in the form of Form 4 give notice of the proposed investigation to every undertaking the conduct of which is to be investigated.

- (2) A notice to a person to -
  - (a) furnish information to;
  - (b) produce any document or article to; or
  - (c) to appear before,

the Commission as contemplated in section 33(4) of the Act must be in the form of Form 5.

- (3) A notice contemplated in subrule (1) must be served as follows -
  - (a) to the person concerned at his or her place of work or residence;
  - (b) if the person concerned is not at his or her place of work or residence, to any person apparently not less than 16 years of age at the place of work or residence of the person concerned; or
  - (c) by registered post addressed to the postal address of the person concerned.

#### **Notice of proposed decisions of Commission**

**17.** A notice containing a proposed decision of the Commission as contemplated in section 36(1) of the Act must be in the form of Form 6.

#### **Notice of action to be taken under section 38 and institution of proceedings in Court**

**18.** (1) The Commission must give notice in the *Gazette* in the form of Form 7 of any action which it wishes to take under section 38 of the Act.

(2) Any proceedings which the Commission wishes to institute in the Court as contemplated in section 38(1) of the Act must be in the form of Form 8.

#### **Application to Court for interim order**

**19.** An application to the Court for an interim order as contemplated in section 39(1) of the Act must be in the form of Form 9.

#### **Notice of consent agreement to be submitted to Court for confirmation as an order of the Court and application to Court for confirmation of agreement of settlement as order of the Court**

**20.** (1) The Commission must give notice in the *Gazette* in the form of Form 10 of any consent agreement referred to in section 40 of the Act to be submitted to the Court for confirmation as an order of the Court.

(2) An application to the Court for confirmation of an agreement of settlement as an order of the Court as contemplated in section 40(1) of the Act must be in the form of Form 11.

**Part 5**  
**Exemption Applications and Procedures**

**Applications for exemption in respect of certain restrictive practices**

**21.** (1) An application for exemption as contemplated in section 27(1) of the Act must be in the form of Form 12.

(2) Upon receiving an application in terms of section 27 of the Act, the Commission must give notice of receipt of the application in the *Gazette* in the form of Form 13.

(3) The Commission may request further information from any person who has submitted a representation in response to a notice published in terms of subrule (2).

(4) If the Commission -

(a) grants an exemption in terms of section 28(1) of the Act, it must issue to the applicant an exemption certificate in the form of Form 14;

(b) refuses to grant an exemption in terms of section 28(1) of the Act, it must issue to the applicant a notice of refusal to grant exemption in the form of Form 15.

(5) The Commission must publish in the *Gazette* a notice in the form of Form 16 of its decision referred to in subrule 4(a) or (b), setting out the section of the Act in terms of which the exemption was granted or refused.

(6) If the subject matter of the application concerned appears not to constitute an infringement of the Part I or the Part II prohibition as contemplated in section 28(1)(c) of the Act, the Commission must issue to the applicant a certificate of clearance in the form of Form 17.

**Revocation or amendment of exemption or revocation of certificate of clearance**

**22.** (1) If the Commission proposes to revoke or amend an exemption or to revoke a certificate of clearance under section 29(1) of the Act, the Commission must give notice of the proposed action in the form of Form 18 -

(a) to the person to whom the exemption was granted or the certificate of clearance was issued; and

(b) to any other person who, in the opinion of the Commission, is likely to have an interest in the matter.

(2) The Commission must issue a revocation or amendment of an exemption or a revocation of a certificate of clearance in the form of Form 19.

(3) An application to the Court for a pecuniary penalty under section 29(3) of the Act must be in the form of Form 20.

**Applications for exemption in respect of intellectual property rights**

**23.** (1) An application for exemption in respect of intellectual property rights as contemplated in section 30(1) of the Act must be in the form of Form 21.

(2) Upon receiving an application in terms of section 30 of the Act, the Commission must give notice of receipt of the application in the *Gazette* in the form of Form 22.

(3) The Commission may request further information from any person who has submitted a representation in response to a notice published in terms of subrule (2).

(4) If the Commission -

(a) grants an exemption under section 30(1) of the Act, it must issue to the applicant an exemption certificate in the form of Form 23;

(b) refuses to grant an exemption under section 30(1) of the Act, it must issue to the applicant a notice of refusal to grant exemption in the form of Form 24.

(5) The Commission must publish in the *Gazette* a notice in the form of Form 25 of its decision referred to in subrule 4(a) or (b), setting out the section of the Act in terms of which the exemption was granted or refused.

(6) If the subject matter of the application concerned appears not to constitute an infringement of the Part I or the Part II prohibition as contemplated in section 30(1) of the Act, the Commission must issue to the applicant a certificate of clearance in the form of Form 26.

#### **Revocation or amendment of exemptions contemplated in section 30 of Act**

**24.** (1) If the Commission proposes to revoke or amend an exemption or to revoke a certificate of clearance under section 30(2) of the Act, the Commission must give notice of the proposed action in the form of Form 27 -

(a) to the person to whom the exemption was granted or the certificate of clearance was issued; and

(b) to any other person who, in the opinion of the Commission, is likely to have an interest in the matter.

(2) The Commission must issue a revocation or amendment of an exemption or a revocation of a certificate of clearance in the form of Form 28.

(3) An application to the Court for a pecuniary penalty under section 29(3) of the Act must be in the form of Form 29.

#### **Application for exemption in respect of professional rules**

**25.** (1) An application for exemption as contemplated in section 31(1) of the Act must be in the form of Form 30.

(2) Upon receiving an application in terms of section 31 of the Act, the Commission must give notice of receipt of the application in the *Gazette* in the form of Form 31.

(3) The Commission may request further information from any person who has submitted a representation in response to a notice published in terms of subrule (2).

(4) If the Commission -

- (a) grants an exemption under section 31(4) of the Act, it must issue to the applicant an exemption certificate in the form of Form 32;
- (b) rejects an application for exemption under section 31(4) of the Act, it must issue to the applicant a notice of refusal to grant exemption in the form of Form 33.

(5) The Commission must publish in the *Gazette* a notice in the form of Form 34 of its decision referred to in subrule 4(a) or (b), setting out the section of the Act in terms of which the exemption was granted or refused.

(6) If the professional rules concerned appear not to contain a restriction that has the effect of preventing or substantially lessening competition in a market, the Commission must issue to the applicant a certificate of clearance in the form of Form 35.

### **Revocation of exemptions as contemplated in section 31 of Act**

**26.** (1) If the Commission proposes to revoke an exemption in respect of any rules under section 31(5) of the Act, the Commission must give notice in the *Gazette* of the proposed action in the form of Form 36.

(2) The Commission must issue a revocation of an exemption in respect of any rules in the form of Form 37.

## **Part 6 Merger Procedures**

### **Merger parties and participants**

**27.** (1) In this Part, in respect of any particular merger -

“acquiring undertaking” means -

- (a) any undertaking that, as a result of a transaction in any circumstances set out in section 42 of the Act, would acquire or establish direct or indirect control over the whole or part of the business of another undertaking;
- (b) any other undertaking that has direct or indirect control over the whole or part of the business of an undertaking referred to in paragraph (a); and
- (c) any other undertaking that is controlled by, or the direct or indirect control over the whole or part of the business which is held by, an undertaking referred to in paragraph (a) or (b);

“primary acquiring undertaking” means an undertaking that meets the definition of acquiring undertaking in paragraph (a) of that definition;

“primary target undertaking” means the undertaking that satisfies the definition of “target undertaking” in paragraph (a) of that definition; and

“target undertaking” means -

- (a) an undertaking that, as a result of a transaction in any circumstances set out in section 42 of the Act -
- (i) would become controlled by, or the direct or indirect control over the whole or part of the business which is held by, another undertaking; or
  - (ii) would transfer control of, or the direct or indirect control over the whole or part of its business to another undertaking; and
- (b) any other undertaking that is controlled by, or the direct or indirect control over the whole or part of the business which is held by, a business described in subparagraph (i).
- (2) The following persons may participate in proceedings before the Commission in respect of any merger -
- (a) the party to the merger who files the merger notice contemplated in Form 38;
  - (b) any other party to the merger who indicates an intention to participate when filing a statement of merger information contemplated in Form 39.

### **Merger notice requirements**

**28.** Each undertaking involved in a proposed merger as contemplated in section 44(1) of the Act must notify the Commission of the proposal in the merger notice in the form of Form 38, and must attach to it a completed statement of merger information in the form of Form 39.

### **Notification of merger investigation**

**29.** If the Commission has referred the particulars of a proposed merger to an inspector for investigation and a report as contemplated in section 49(3) of the Act, the Commission must inform the undertakings involved of such referral in the form of Form 40.

### **Notice of determination made by Commission in relation to proposed merger**

**30.** The Commission must give notice of the determination made by it in relation to a proposed merger in the form of Form 41 -

- (a) to the parties involved in the proposed merger; and
- (b) by notice in the *Gazette*,

as contemplated in section 47(7) of the Act.

### **Revocation of approval of proposed merger**

**31.** (1) If the Commission proposes to revoke its decision under section 48(1) to approve the implementation of a proposed merger, the Commission must give notice of the proposed action in the form of Form 42 -

- (a) to every undertaking involved in the merger; and

- (b) to any other person who in the opinion of the Commission is likely to have an interest in the matter.

(2) The Commission must issue a revocation of its decision to approve the implementation of a proposed merger in the form of Form 43.

**Notice of application for review of decisions of Commission on mergers by Minister and notice of determination**

**32.** (1) The Minister must give notice, as contemplated in section 49(2) of the Act, of an application to review the decision of the Commission in relation to a proposed merger in the *Gazette* in the form of Form 44.

(2) The Minister must give notice, in the form of Form 45 -

- (a) to the Commission;
- (b) to the parties involved in a proposed merger; and
- (c) in the *Gazette*,

of the determination made by the Minister in relation to the review by the Minister of the decision of the Commission in relation to a proposed merger, as contemplated in section 49(4).

**Application to Court in terms of section 51**

**33.** An application to the Court as contemplated in section 51 of the Act in respect of a merger which being, or has been implemented in contravention of Chapter 4 of the Act, must be in the form of Form 46.

**Part 7  
Miscellaneous**

**Requirements for small undertaking**

- 34.** A small undertaking is -
- (a) a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, which is managed by one owner or more and, includes its branches or subsidiaries, if any; and
  - (b) predominantly carried on in any sector or subsector of the economy mentioned in column 1 of Annexure B, and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of that Annexure opposite the smallest relevant size or class as mentioned in column 2 of that Annexure.

**Financial year of Commission**

**35.** The financial year of the Commission ends on 31 March of each year.

**Criteria to be applied for determining dominant position in market**

**36.** (1) An undertaking has, or two or more undertakings have, a dominant position in a market if -



- (a) it has or they have at least 45% of that market;
- (b) it has or they have at least 35%, but less than 45%, of that market, unless it can show that it does not have market power; or
- (c) it has or they have less than 35% of that market, but has or have market power.

(2) For the purposes of this rule “market power” means the power of an undertaking or undertakings to control prices, to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers.

### Notice from chairperson of Commission

37. A notice from the chairperson of the Commission as contemplated in section 54(2) of the Act, must be in the form of Form 47.

## ANNEXURE A

### Index to Forms and Forms

FORM	DESCRIPTION	RULE
Form 1	Confidentiality claim	11(1)
Form 2	Complaint	15(1)
Form 3	Notice of decision not to conduct an investigation	15(2)(b)
Form 4	Notice of proposed investigation	16(1)
Form 5	Notice to appear before Commission	16(2)
Form 6	Notice of proposed decision of Commission in relation to investigation	17
Form 7	Notice of action to be taken under section 38	18(1)
Form 8	Institution of proceedings in court for order	18(2)
Form 9	Application to court for interim order	19
Form 10	Notice of consent agreement to be submitted to Court	20(1)
Form 11	Application to Court for confirmation of settlement agreement as order of Court	20(2)
Form 12	Application for exemption in respect of certain restrictive practices	21(1)
Form 13	Notice of receipt of application for exemption in respect of certain restrictive practices	21(2)
Form 14	Exemption certificate in respect of certain restrictive practices	21(4)(a)
Form 15	Notice of refusal to grant exemption	21(4)(b)
Form 16	Notice of decision of Commission regarding exemption	21(5)
Form 17	Certificate of clearance in respect of certain restrictive practices	21(6)
Form 18	Notice of proposed revocation or amendment of exemption / Revocation of clearance certificate	22(1)
Form 19	Revocation or amendment of exemption / Revocation of clearance certificate	22(2)
Form 20	Application to Court for pecuniary penalty	22(3)

Form 21	Application for exemption in respect of intellectual property rights	23(1)
Form 22	Notice of receipt of application for exemption in respect of intellectual property rights	23(2)
Form 23	Exemption certificate in respect of intellectual property rights	23(4)(a)
Form 24	Notice of refusal to grant exemption in respect of intellectual property rights	23(4)(b)
Form 25	Notice of decision of Commission regarding exemption in respect of intellectual property rights	23(5)
Form 26	Certificate of clearance in respect of intellectual property rights	23(6)
Form 27	Notice of proposed revocation or amendment of exemption / Revocation of clearance certificate in respect of intellectual property rights	24(1)
Form 28	Revocation or amendment of exemption / Revocation of clearance certificate in respect of intellectual property rights	24(2)
Form 29	Application to Court for pecuniary penalty	24(3)
Form 30	Application for exemption in respect of professional rules	25(1)
Form 31	Notice of receipt of application for exemption in respect of professional rules	25(2)
Form 32	Exemption certificate in respect of professional rules	25(4)(a)
Form 33	Notice of refusal to grant exemption in respect of professional rules	25(4)(b)
Form 34	Notice of decision of Commission regarding exemption in respect of professional rules	25(5)
Form 35	Certificate of clearance in respect of professional rules	25(6)
Form 36	Notice of proposed revocation of exemption in respect of professional rules	26(1)
Form 37	Revocation of exemption in respect of professional rules	26(2)
Form 38	Merger notice	28
Form 39	Statement of merger information	28
Form 40	Notice of referral to inspector for investigation and report	29
Form 41	Notice of determination made by Commission in relation to proposed merger	30
Form 42	Notice of proposed revocation of decision to approve implementation of proposed merger	31(1)
Form 43	Revocation of decision to approve implementation of proposed merger	31(2)
Form 44	Notice of application for review of decision of Commission in relation to proposed merger	32(1)
Form 45	Notice of determination made by Minister in relation to review of decision of Commission in relation to proposed merger	32(2)
Form 46	Application to Court in terms of section 51	33
Form 47	Notice from chairperson of Commission regarding suffering of alleged damages	37

**FORM 1**

## NAMIBIAN COMPETITION COMMISSION

**CONFIDENTIALITY CLAIM**

COMPETITION ACT, 2003

(Rule 11(1))

To: The Namibian Competition Commission

**Concerning:**

(Name and file number :)

On a separate sheet of paper, list the following information, and set out the facts and contentions supporting your claim that the identified information is confidential.

Column 1: The name of the document that contains the confidential information.

Column 2: The page and line number.

Column 3: The name of the undertaking that owns the particular information.

Column 4: The nature of the economic value of the information.

Column 5: The existing restrictions on access to the information

**Statement of confidentiality:**

I, \_\_\_\_\_,  
have compiled or supervised the persons who compiled the attached list. I believe that the information identified in that list is confidential information as defined in section 1 of the Act.

**Name and title of person authorised to sign:****Authorised signature:****Date:**

For office Commission file number:

Date filed:

Use only: \_\_\_\_\_

**FORM 2**

## NAMIBIAN COMPETITION COMMISSION

**COMPLAINT**

COMPETITION ACT, 2003  
(Section 33, Rule 15(1))

To: The Namibian Competition Commission

**From:**

(Name of person submitting complaint:)

**Concerning:**

(Name of person whose conduct is the subject of this complaint:)

**Description of complaint:**

(Provide a concise statement of the conduct that is the subject of this complaint:)

1. Please attach to this form any relevant documents, as well as a typed statement describing the conduct that is the subject of this complaint, including -
  - (a) the names of each party involved in the conduct;
  - (b) the dates on which the conduct occurred;
  - (c) a statement indicating when and how you became aware of the conduct, and
  - (d) any other information you consider relevant.
2. Is the conduct continuing? Yes  No
3. If not, when did the conduct end? \_\_\_\_\_

**Name and title of person authorised to sign:**

---

**Authorised signature:**

**Date:**

**FORM 2** (continue)

For office Use only:	Commission file number: _____	Date filed _____
----------------------	-------------------------------	------------------

**Please note:**

If this complaint is lodged by a person other than an individual, please provide contact details of the person authorised to discuss the complaint.

**FORM 3**

NAMIBIAN COMPETITION COMMISSION

**NOTICE OF DECISION NOT TO CONDUCT AN INVESTIGATION**

COMPETITION ACT, 2003  
(Section 33(2), Rule 15(2)(b))

**To:** \_\_\_\_\_

**Concerning:**

(Name and file number of complaint:)
--------------------------------------

1. The Commission has received a complaint against the above named respondent on \_\_\_\_\_
2. The Commission gives notice that it has decided not to conduct an investigation into the alleged infringement concerned.
3. The reasons for the decision of the Commission are as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

**Date:**

\_\_\_\_\_

\_\_\_\_\_

**Please note:**

This notice must be sent to the person from whom a complaint has been received.

**FORM 4**

NAMIBIAN COMPETITION COMMISSION

**NOTICE OF PROPOSED INVESTIGATION**

COMPETITION ACT, 2003  
(Section 33(3), Rule 16(1))

**To:** \_\_\_\_\_

**Concerning:**

(Name and file number of complaint:)

1. The Commission has received a complaint against the above named respondent on: \_\_\_\_\_  
in relation to the following subject matter: \_\_\_\_\_  
\_\_\_\_\_
2. The Commission gives notice that it has decided to conduct an investigation into the alleged infringement concerned.
3. The purpose of the investigation is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. You are hereby invited to submit to the Commission within 30 days as from the date of this notice, any written representations which you may wish to make to the Commission in connection with any matter to be investigated.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Please note:**

This notice must be sent to every undertaking the conduct of which is to be investigated.

**FORM 5**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE TO APPEAR BEFORE COMMISSION**

COMPETITION ACT, 2003  
(Section 33(4), Rule 16(2))

**To:****Concerning:**

(Name and file number:)

1. The Commission has decided to conduct an investigation concerning the above mentioned matter.
2. You are required to appear at \_\_\_\_\_ and give evidence before the Competition Commission on \_\_\_\_\_ at \_\_\_\_\_ o' clock, in the morning/afternoon.\*
3. You are also required to bring with you:
  - (a) the documents or items listed on the attached \_\_\_\_\_ sheet(s); and
  - (b) any other documents or items in your possession or under your control that relate to this matter.

**Name and title of person authorised to sign on behalf of the Commission:**

---

**Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable



**FORM 6**

**NAMIBIAN COMPETITION COMMISSION**

**NOTICE OF PROPOSED DECISION OF COMMISSION  
IN RELATION TO INVESTIGATION**

COMPETITION ACT, 2003  
(Section 36(1), Rule 17))

**To:** \_\_\_\_\_

**Concerning:**

(Name and file number of complaint:)
--------------------------------------

1. The Commission has received a complaint against the above named respondent on \_\_\_\_\_
2. The Commission proposes to make a decision that -
  - (a) the Part I prohibition has been infringed;\*
  - (b) the Part II prohibition has been infringed.\*
3. The reasons for the proposed decision are:
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
4. The Commission considers to seek the following relief from the Court by way of the institution of proceedings in accordance with section 38:
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
5. In relation to the proposed decision of the Commission you may -
  - (a) submit written representations to the Commission;
  - (b) indicate whether you require to an opportunity to make oral representations to the Commission,

within 30 days as from the date of this notice.

**FORM 6** (Continue)

**Name and title of person authorised to sign on behalf of the Commission:**

---

**Authorised signature:**

**Date:**

**Please note:**

\* Delete whichever is not applicable.

This notice must be sent to every undertaking which may be affected by the proposed decision.

**FORM 7**

**NAMIBIAN COMPETITION COMMISSION**

**NOTICE OF ACTION TO BE TAKEN UNDER SECTION 38**

COMPETITION ACT, 2003  
(Section 41, Rule 18(1))

**Concerning:**

(Name and file number of complaint:)
--------------------------------------

1. The Commission has received a complaint against the above named respondent on \_\_\_\_\_ and has given notice of its proposed decision on \_\_\_\_\_.
  
2. The Commission gives notice that it intends to take the following action under section 38: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 against: \* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
3. The nature of the conduct that is the subject of the action is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Name and title of person authorised to sign on behalf of the Commission:**

---

**Authorised signature:**

**Date:**

--

--

**Please note:**

\* Please mention the name of every undertaking involved.

**FORM 8**

NAMIBIAN COMPETITION COMMISSION

**INSTITUTION OF PROCEEDINGS IN COURT FOR ORDER**

COMPETITION ACT, 2003  
(Section 38, Rule 18(2))

**Concerning:**

(Name and file number of complaint:)

1. The Commission has received a complaint against the above named respondent on \_\_\_\_\_ and has given notice of its proposed decision on \_\_\_\_\_.

2. The Commission hereby institutes proceedings in the Court for an order:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

against: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the grounds: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

**Date:**

\_\_\_\_\_

\_\_\_\_\_

**Please note:**

Please mention in paragraph 2 the order which the Commission sought, the name(s) of the undertaking(s) involved and grounds on which the order is sought.

**FORM 9**

**NAMIBIAN COMPETITION COMMISSION  
APPLICATION TO COURT FOR INTERIM ORDER**

COMPETITION ACT, 2003  
(Section 39(1), Rule 19)

**Concerning:**

(Name of undertaking concerned)

- 1. The Commission on reasonable grounds believes that the undertaking(s) mentioned above: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and that it is necessary for the Commission to act as a matter of urgency for the purpose -

- (a) of preventing serious, irreparable damage to any person or category of persons; or\*
- (b) of protecting the public interest.

- 2. The Commission therefore applies to the Court for an interim order restraining the undertaking or undertakings from engaging in the conduct referred to in paragraph 1.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

**Date:**

\_\_\_\_\_

\_\_\_\_\_

**Please note:**

Please mention in paragraph 1 the conduct of the undertaking on which the application of the Commission is based, as contemplated in section 39(1).

\* Delete whichever is not applicable.

**FORM 10**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF CONSENT AGREEMENT TO BE  
SUBMITTED TO COURT**

COMPETITION ACT, 2003  
(Section 41, Rule 20(1))

**Concerning:**

(Name and file number of complaint:)

1. The Commission has received a complaint against the above named respondent on \_\_\_\_\_ and has given notice of its proposed decision on \_\_\_\_\_.
2. The Commission gives notice that it intends to submit the attached consent agreement with: \* \_\_\_\_\_

---



---



---



---

to the Court for confirmation as an order of the Court as contemplated in section 40(1) of the Act.

3. The nature of the conduct that is the subject of the consent agreement is: \_\_\_\_\_

---



---



---



---

**Name and title of person authorised to sign on behalf of the Commission:**

---

**Authorised signature:**

**Date:**

**Please note:**

\* Please mention the name of every undertaking involved.

**FORM 11**

NAMIBIAN COMPETITION COMMISSION

**APPLICATION TO COURT FOR CONFIRMATION OF  
SETTLEMENT AGREEMENT AS ORDER OF COURT**

COMPETITION ACT, 2003  
(Section 40(1), Rule 20(2))

**Concerning:**

(Name and file number of complaint:)
--------------------------------------

1. The Commission has received a complaint against the above named respondent on \_\_\_\_\_ and has given notice -
  - (a) of its proposed decision on \_\_\_\_\_;
  - (b) in the *Gazette* of the consent agreement to be submitted to the Court for confirmation as an order to the Court on \_\_\_\_\_.
  
2. The Commission hereby applies to the Court for confirmation as an order of the Court of the attached consent agreement with: \* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

--

**Date:**

--

**Please note:**

\* Please mention the name of every undertaking involved.

**FORM 12**

## NAMIBIAN COMPETITION COMMISSION

**APPLICATION FOR EXEMPTION IN RESPECT OF  
CERTAIN RESTRICTIVE PRACTICES**

COMPETITION ACT, 2003  
(Section 27(1), Rule 21(1))

**To:** The Competition Commission

**From:**

(Name of Applicant:)

(Name of undertaking:)

1. We apply in terms of section 27(1) of the Act for an exemption from the provisions of Part I\* / Part II\* of Chapter 3 of the Act in respect of -

- |   |   |
|---|---|
| <input type="checkbox"/> a single agreement   | <input type="checkbox"/> a category of agreements           |
| <input type="checkbox"/> a decision           | <input type="checkbox"/> a category of decisions            |
| <input type="checkbox"/> a concerted practice | <input type="checkbox"/> a category of concerted practices, |

as described in the attached document.

2. We seek an exemption for a period of \_\_\_\_\_ years.

3. In respect of this matter, has a previous exemption been:

- |          |                              |                             |
|----------|------------------------------|-----------------------------|
| Granted? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Refused? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

4. If you have answered "yes" to either question above, please provide the case number for the previous exemption application \_\_\_\_\_.

**Name and title of person authorised to sign:**

\_\_\_\_\_

**Authorised Signature:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

For office Commission file number:  
Use only:

\_\_\_\_\_

Date filed:

\_\_\_\_\_



**FORM 12 (Continue)****Please note:**

1. The following information must be included in your description of the agreement, decision or practice for which you seek an exemption:
  - (a) Your address in Namibia for service of documents.
  - (b) A short description of your business.
  - (c) A brief description of the agreement, decision or practice which you seek to have exempted from the application of Chapter 2, and, if an agreement or decision has already been made, its date, as well as a certified copy thereof.
  - (d) The names and addresses of other parties to that agreement, decision or practice.
  - (e) The objective in terms of section 28(3) of the Act on which you rely.
  - (f) The facts and contentions on which you rely.
  - (g) The sections of the Act that you believe may be contravened by the agreement, decision, practice, or category of agreements, decisions or practices you have described, and a motivation for the belief.
  
2. Generally, information relating to this application is part of the public record. You have the right to identify information that you believe is confidential, by completing Form 1 and submitting it with this application.

\* Delete whichever is not applicable.

**FORM 13**

NAMIBIAN COMPETITION COMMISSION

**NOTICE OF RECEIPT OF APPLICATION FOR EXEMPTION  
IN RESPECT OF CERTAIN RESTRICTIVE PRACTICES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 27(3), Rule 21(2))

**Concerning:**

(Name and file number of applicant:)
--------------------------------------

1. The Commission gives notice that it has received an application for exemption in respect of certain restrictive practices from the above named applicant on \_\_\_\_\_.
  
2. The nature of the exemption sought by the applicant is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
3. Interested persons are invited to submit to the Commission, within 30 days as from the date of this notice, any written representations that they may wish to make in regard to the application.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

**Date:**

--

--

**FORM 14**

## NAMIBIAN COMPETITION COMMISSION

**EXEMPTION CERTIFICATE IN RESPECT OF  
CERTAIN RESTRICTIVE PRACTICES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 28(1)(a), Rule 21(4)(a))

**To:** \_\_\_\_\_

(Name and file number of Applicant:)

1. You have applied to the Commission on: \_\_\_\_\_ for an exemption in respect of certain restrictive practices, as contemplated in section 27(1) of the Act.

2. Because the agreement, decision or practice concerned contributes to the objective set out in section 28(3) \_\_\_\_\_ \*of the Act, the Commission grants an exemption in terms of section 28(1)(a) of the Act for a period of \_\_\_\_\_ years, ending on \_\_\_\_\_, for:

- |   |   |
|---|---|
| <input type="checkbox"/> a single agreement   | <input type="checkbox"/> a category of agreements           |
| <input type="checkbox"/> a decision           | <input type="checkbox"/> a category of decisions            |
| <input type="checkbox"/> a concerted practice | <input type="checkbox"/> a category of concerted practices, |

as described in your application. This exemption is subject to:

- no conditions
- the conditions listed on the attached sheet.

3. The Commission has the authority in terms of section 29(1) of the Act to revoke or amend this exemption if -

- (a) the exemption was granted on materially incorrect or misleading information;
- (b) there has been a material change of circumstances since the exemption was granted; or
- (c) a condition upon which the exemption was granted, has not been complied with.

**FORM 14** (Continue)

Name and title of person authorised to sign on behalf of the Commission:

---

**Authorised Signature:**

**Date**

**Please note:**

\* Please insert the appropriate paragraph of section 28(3) of the Act.

**FORM 15**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF REFUSAL TO GRANT EXEMPTION**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 28(1)(b), Rule 21(4)(b))

**To:** \_\_\_\_\_

(Name and file number of Applicant:)

1. You have applied to the Commission on \_\_\_\_\_  
for an exemption in respect of certain restrictive practices, as contemplated in  
section 27(1) of the Act for:

- |   |   |
|---|---|
| <input type="checkbox"/> a single agreement   | <input type="checkbox"/> a category of agreements           |
| <input type="checkbox"/> a decision           | <input type="checkbox"/> a category of decisions            |
| <input type="checkbox"/> a concerted practice | <input type="checkbox"/> a category of concerted practices, |

as described in your application.

2. After reviewing the information you provided, the Commission refuses to grant  
an exemption for the reasons mentioned in the accompanied statement.

**Name and title of person authorised to sign on behalf of the Competition  
Commission:**

---

**Authorised Signature:****Date**

**FORM 16**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF DECISION OF COMMISSION  
REGARDING EXEMPTION**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 28, Rule 21(5))

**Concerning:**

(Name and file number of applicant:)

1. The above named applicant has applied to the Commission on \_\_\_\_\_  
\_\_\_\_\_ for an exemption in respect of certain restrictive practices, as  
contemplated in section 27(1) of the Act for:

- |   |   |
|---|---|
| <input type="checkbox"/> a single agreement   | <input type="checkbox"/> a category of agreements           |
| <input type="checkbox"/> a decision           | <input type="checkbox"/> a category of decisions            |
| <input type="checkbox"/> a concerted practice | <input type="checkbox"/> a category of concerted practices, |

as described in his or her or its application.

2. The Commission gives notice of its decision in terms of section 28(1)(a)\* or (b)\*  
of its decision to grant \* / refuse\* the exemption concerned.

**Name and title of person authorised to sign on behalf of the Commission:**

---

**Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable.

**FORM 17**

## NAMIBIAN COMPETITION COMMISSION

**CERTIFICATE OF CLEARANCE IN RESPECT OF  
CERTAIN RESTRICTIVE PRACTICES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 28(1)(c), Rule 21(6))

**To:** \_\_\_\_\_.

(Name and file number of Applicant:)

1. You have applied to the Commission on \_\_\_\_\_  
for an exemption in respect of certain restrictive practices, as contemplated in  
section 27(1) of the Act for:

- |                          |                      |                          |                                    |
|--------------------------|----------------------|--------------------------|------------------------------------|
| <input type="checkbox"/> | a single agreement   | <input type="checkbox"/> | a category of agreements           |
| <input type="checkbox"/> | a decision           | <input type="checkbox"/> | a category of decisions            |
| <input type="checkbox"/> | a concerted practice | <input type="checkbox"/> | a category of concerted practices, |

as described in your application.

2. In the opinion of the Commission, based on the facts in its possession, the  
agreement, decision or concerted practice or the category of agreements, decisions  
or concerted practices concerned, does not constitute an infringement of the Part  
I\* / Part II\* prohibition as contemplated in section 28(1)(c) of the Act.

**Name and title of person authorised to sign on behalf of the Competition  
Commission:**

\_\_\_\_\_

**Authorised Signature:****Date****Please note:**

\* Delete whichever is not applicable.

**FORM 18**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF PROPOSED REVOCATION OR AMENDMENT OF  
EXEMPTION / REVOCATION OF CLEARANCE CERTIFICATE**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 29(2)(a) and (b), Rule 22(1))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of applicant:)

1. The Commission has issued an exemption certificate\* / clearance certificate\* to the above named applicant on \_\_\_\_\_.
2. The Commission gives notice that it intends to revoke\* / amend\* the exemption concerned\* / revoke the clearance certificate concerned\* on the ground that -
  - (a) the exemption was granted\* / the certificate of clearance\* was issued on materially incorrect\* / misleading information\*;\*
  - (b) there has been a material change of circumstances since the exemption was granted\* / the certificate was issued\*;\*
  - (c) a condition upon which an exemption was granted has not been complied with. \*
3. You may submit to the Commission, within 30 days as from the date of receipt of this notice, any written representations that you may wish to make in regard to the proposed revocation\* / amendment\* of the exemption\* / revocation of the clearance certificate\*.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:****Please note:** \* Delete whichever is not applicable.



**FORM 19**

## NAMIBIAN COMPETITION COMMISSION

**REVOCATION OR AMENDMENT OF EXEMPTION /  
REVOCATION OF CLEARANCE CERTIFICATE**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 29(1)(a) and (b), Rule 22(2))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of applicant:)

1. The Commission has issued an exemption certificate\* / clearance certificate\* to the above named applicant on \_\_\_\_\_, and has given notice on \_\_\_\_\_ that it intends to revoke\* / amend\* the exemption concerned\* / revoke the clearance certificate concerned\*.
2. The Commission hereby, in terms of section 29(1) of the Act, revokes\* / amends\* the exemption concerned\* / revokes the clearance certificate concerned\* on the ground that -
  - (a) the exemption was granted\* / the certificate of clearance\* was issued on materially incorrect\* / misleading information\*;\*;
  - (b) there has been a material change of circumstances since the exemption was granted\* / the certificate was issued\*;\*;
  - (c) a condition upon which an exemption was granted has not been complied with.\*

**Name and title of person authorised to sign on behalf of the Commission:****Authorised signature:****Date:****Please note:** \* Delete whichever is not applicable.

**FORM 20**

NAMIBIAN COMPETITION COMMISSION

**APPLICATION TO COURT FOR PECUNIARY PENALTY**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 29(3), Rule 22(3))

**Concerning:**

(Name and file number of applicant:)
--------------------------------------

1. The Commission has granted an exemption to the above named applicant for an exemption in respect of certain restrictive practices, as contemplated in section 27(1) of the Act and has issued an exemption certificate to the above named applicant on \_\_\_\_\_.
2. The exemption concerned has been made subject to the conditions listed on the attached sheet.
3. Due to the fact that there has been non-compliance with a condition of the exemption concerned, namely \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_,

the Commission hereby applies to the Court for the imposition of a pecuniary penalty of N\$\_\_\_\_\_ - \_\_\_\_\_ in respect of the non-compliance concerned.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

**Date:**

--

--

**FORM 21**

## NAMIBIAN COMPETITION COMMISSION

**APPLICATION FOR EXEMPTION IN RESPECT OF  
INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(1)), Rule 23(1))

**To:** The Competition Commission**From:**

(Name of Applicant:)

(Name of undertaking:)

1. We apply in terms of section 30(1) of the Act for an exemption from the provisions of Part I\* / Part II\* of Chapter 3 of the Act in respect of -

a single agreement

a category of agreements

a concerted practice

a category of concerted practices,

relating to the exercise of any right or interest acquired or protected in terms of any law relating to copyright, patents, designs, trade marks, plant varieties or any other intellectual property rights, as described in the attached document.

2. We seek an exemption for a period of \_\_\_\_\_ years.

3. In respect of this matter, has a previous exemption been:

Granted?  Yes  No

Refused?  Yes  No

4. If you have answered "yes" to either question above, please provide the case number for the previous exemption application \_\_\_\_\_.

**Name and title of person authorised to sign:****Authorised Signature:****Date:**

For office Commission file number:

Date filed:

Use only:

\_\_\_\_\_

\_\_\_\_\_

**FORM 21** (Continue)**Please note:**

1. The following information must be included in your description of the agreement or practice for which you seek an exemption:
  - (a) Your address in Namibia for service of documents.
  - (b) A short description of your business.
  - (c) A brief description of the agreement or practice which you seek to have exempted from the application of Chapter 2, and, if an agreement has already been made, its date, as well as a certified copy thereof.
  - (d) The names and addresses of other parties to that agreement or practice.
  - (e) The objective in terms of section 28(3) of the Act on which you rely.
  - (f) The facts and contentions on which you rely.
  - (g) The sections of the Act that you believe may be contravened by the agreement, practice, or category of agreements or practices you have described, and a motivation for the belief.
  
2. Generally, information relating to this application is part of the public record. You have the right to identify information that you believe is confidential, by completing Form 1 and submitting it with this application.

\* Delete whichever is not applicable.

**FORM 22**

**NAMIBIAN COMPETITION COMMISSION**

**NOTICE OF RECEIPT OF APPLICATION FOR EXEMPTION  
IN RESPECT OF INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(2)), Rule 23(2))

**Concerning:**

(Name and file number of applicant:)
--------------------------------------

1. The Commission gives notice that it has received an application for exemption from the above-named applicant in respect of an agreement or practice relating to the exercise of any right or interest acquired or protected in terms of any law relating to copyright, patents, designs, trade marks, plant varieties or any other intellectual property rights on \_\_\_\_\_.
  
2. The nature of the exemption sought by the applicant is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
3. Interested persons are invited to submit to the Commission, within 30 days as from the date of this notice, any written representations that they may wish to make in regard to the application.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

**Date:**

--

--

**FORM 23**

## NAMIBIAN COMPETITION COMMISSION

**EXEMPTION CERTIFICATE IN RESPECT OF  
INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(1), Rule 23(4)(a))

**To:** \_\_\_\_\_

(Name and file number of Applicant:)

1. You have applied to the Commission on: \_\_\_\_\_ for an exemption in respect of intellectual property rights, as contemplated in section 30(1) of the Act.
2. After reviewing the information you provided, the Commission grants an exemption in terms of section 30(1) of the Act in respect of an agreement or practice relating to the exercise of any right or interest acquired or protected in terms of any law relating to copyright, patents, designs, trade marks, plant varieties or any other intellectual property rights as described in your application. This exemption is subject to:
  - no conditions
  - the conditions listed on the attached sheet.
3. The Commission has the authority in terms of section 30(2) of the Act to revoke or amend this exemption if -
  - (a) the exemption was granted on materially incorrect or misleading information;
  - (b) there has been a material change of circumstances since the exemption was granted; or
  - (c) a condition upon which the exemption was granted, has not been complied with.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised Signature:****Date**

**FORM 24**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF REFUSAL TO GRANT EXEMPTION IN  
RESPECT OF INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(1), Rule 23(4)(b))

**To:**

(Name and file number of Applicant:)

1. You have applied to the Commission on: \_\_\_\_\_ for an exemption in respect of intellectual property rights, as contemplated in section 30(1) of the Act for:

a single agreement

a category of agreements

a concerted practice

a category of concerted practices,

as described in your application.

2. After reviewing the information you provided the Commission refuses to grant an exemption for the reasons mentioned in the accompanied statement.

**Name and title of person authorised to sign on behalf of the Commission:****Authorised Signature:****Date**

**FORM 25**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF DECISION OF COMMISSION REGARDING EXEMPTION  
IN RESPECT OF INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(2), Rule 23(5))

**Concerning:**

(Name and file number of applicant:)

1. The above named applicant has applied to the Commission on \_\_\_\_\_  
\_\_\_\_\_ for an exemption in respect of intellectual property rights as  
contemplated in section 30(1) of the Act for:

a single agreement

a category of agreements

a concerted practice

a category of concerted practices,

as described in his or her or its application.

2. The Commission gives notice of its decision in terms of section 30(1) of the Act  
of its decision to grant \* / refuse\* the exemption concerned.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable.



**FORM 26**

## NAMIBIAN COMPETITION COMMISSION

**CERTIFICATE OF CLEARANCE IN RESPECT OF  
INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(2), Rule 23(6))

**To:** \_\_\_\_\_.

(Name and file number of Applicant:)

1. You have applied to the Commission on: \_\_\_\_\_ for an exemption in respect of intellectual property rights, as contemplated in section 30(1) of the Act for:

a single agreement

a category of agreements

a concerted practice

a category of concerted practices,

as described in your application.

2. In the opinion of the Commission, based on the facts in its possession, the agreement or concerted practice or the category of agreements or concerted practices concerned, does not constitute an infringement of the Part I\* / the Part II\* prohibition as contemplated in section 30(1) of the Act.

**Name and title of person authorised to sign on behalf of the Competition Commission:****Authorised Signature:****Date****Please note:**

\* Delete whichever is not applicable.

**FORM 27**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF PROPOSED REVOCATION OR AMENDMENT OF  
EXEMPTION / REVOCATION OF CLEARANCE CERTIFICATE  
IN RESPECT OF INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(2), Rule 24(1))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of applicant:)

1. The Commission has issued an exemption certificate\* / clearance certificate\* to the above named applicant on \_\_\_\_\_.
2. The Commission gives notice that it intends to revoke\* / amend\* the exemption concerned\* / revoke the clearance certificate concerned\* on the ground that -
  - (a) the exemption was granted\* / the certificate of clearance\* was issued on materially incorrect\* / misleading information\*;\*
    - (b) there has been a material change of circumstances since the exemption was granted\* / the certificate was issued\*;\*
      - (c) a condition upon which an exemption was granted has not been complied with. \*
3. You may submit to the Commission, within 30 days as from the date of receipt of this notice, any written representations that you may wish to make in regard to the proposed revocation\* / amendment\* of the exemption\* / revocation of the clearance certificate\*.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:****Please note:** \* Delete whichever is not applicable.

**FORM 28**

## NAMIBIAN COMPETITION COMMISSION

**REVOCAION OR AMENDMENT OF EXEMPTION / REVOCAION  
OF CLEARANCE CERTIFICATE IN RESPECT OF  
INTELLECTUAL PROPERTY RIGHTS**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(2), Rule 24(2))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of applicant:)

1. The Commission has issued an exemption certificate\* / clearance certificate\* to the above named applicant on \_\_\_\_\_, and has given notice on \_\_\_\_\_ that it intends to revoke\* / amend\* the exemption concerned\* / revoke the clearance certificate concerned\*.
2. The Commission hereby, in terms of section 30(2) of the Act, revokes\* / amends\* the exemption concerned\* / revokes the clearance certificate concerned\* on the ground that -
  - (a) the exemption was granted\* / the certificate of clearance\* was issued on materially incorrect\* / misleading information\*;\*
  - (b) there has been a material change of circumstances since the exemption was granted\* / the certificate was issued\*;\*
  - (c) a condition upon which an exemption was granted has not been complied with. \*

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:****Please note:** \* Delete whichever is not applicable.

**FORM 29**

## NAMIBIAN COMPETITION COMMISSION

**APPLICATION TO COURT FOR PECUNIARY PENALTY**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 30(2), Rule 24(3))

**Concerning:**

(Name and file number of applicant:)

1. The Commission has granted an exemption to the above named applicant in respect of an agreement or practice relating to the exercise of any right or interest acquired or protected in terms of any law relating to copyright, patents, designs, trade marks, plant varieties or any other intellectual property rights. on \_\_\_\_\_  
\_\_\_\_\_.
2. The exemption concerned has been made subject to the conditions listed on the attached sheet.
3. Due to the fact that there has been non-compliance with a condition of the exemption concerned, namely \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

the Commission hereby applies to the Court for the imposition of a pecuniary penalty of N\$\_\_\_\_\_ - \_\_\_\_ in respect of the non-compliance concerned.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:**

NAMIBIAN COMPETITION COMMISSION

**APPLICATION FOR EXEMPTION IN RESPECT OF PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31(1), Rule 25(1))

**To:** The Competition Commission

**From:**

(Name of applicant association:)
----------------------------------

1. We apply in terms of section 31(1) of the Act to exempt the professional rules of the applicant association from the provisions of Part I\* / Part II\* of Chapter 3 of the Act.
2. This profession  is registered\*\*  is not registered\*\* in terms of a particular Act: \_\_\_\_\_ (insert name of Act).
3. We seek an exemption for a period of \_\_\_\_\_ years.
4. The exemption is required in order to maintain -
 

<input type="checkbox"/> Professional Standards	<input type="checkbox"/> the orderly function of the profession,
---	--

 as motivated in the attached document, which also sets out -
  - (a) our address in Namibia for service of documents;
  - (b) the facts and contentions on which we rely; and
  - (c) the sections of the Act which we believe our rules may contravene, and a motivation for that belief.
6. Name of Minister concerned: \_\_\_\_\_

**Authorised Signature:**

**Date:**

--

--

For office Commission file number:	Date filed:
Use only: _____	_____

**FORM 30** (Continue)**Please note:**

1. Generally, information relating to this application is part of the public record. You have a right to identify information that you believe is confidential, by completing Form 1 and submitting it with this application.
- \* Delete whichever is not applicable.
- \*\* If the applicant association is registered, attach a copy of the registration certificate, or other comparable proof of registration.

**FORM 31**

**NAMIBIAN COMPETITION COMMISSION**

**NOTICE OF RECEIPT OF APPLICATION FOR EXEMPTION  
IN RESPECT OF PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31(3)), Rule 25(2))

**Concerning:**

(Name and file number of applicant association)
---

1. The Commission gives notice that it has on \_\_\_\_\_ received an application from the above-named applicant association for exemption from the provisions of Part 1\* / Part \* of Chapter 3 of the Act in respect of professional rules.
2. The nature of the exemption sought by the applicant is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
3. Interested persons are invited to submit to the Commission, within 30 days as from the date of this notice, any written representations that they may wish to make concerning the application.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:**

**Date:**

**Please note:**

\* Delete whichever is not applicable.

**FORM 32**

## NAMIBIAN COMPETITION COMMISSION

**EXEMPTION CERTIFICATE IN RESPECT OF  
PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31(4), Rule 25(4)(a))

**To:**

(Name and file number of applicant association:)

1. You have applied to the Commission on: \_\_\_\_\_ for an exemption in respect of professional rules, as contemplated in section 31(1) of the Act.
2. After reviewing the information you provided and after consulting with the responsible Minister, the Commission grants an exemption in terms of section 31(4) of the Act in respect of all the professional rules\* / part of the professional rules as indicated on the attached sheet\*. This exemption is subject to:  
 no conditions  
 the conditions listed on the attached sheet.
3. The Commission has the authority in terms of section 31(5) of the Act to revoke this exemption if the Commission considers that any rules, either wholly or any part thereof should no longer be exempt under section 31.

**Name and title of person authorised to sign on behalf of the Commission:****Authorised Signature:****Date****Please note:**

\* Delete whichever is not applicable.



**FORM 33**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF REFUSAL TO GRANT EXEMPTION  
IN RESPECT OF PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31(4), Rule 25(4)(b))

**To:**

(Name and file number of applicant association:)

1. You have applied to the Commission on: \_\_\_\_\_ for an exemption in respect of professional rules, as contemplated in section 31(1) of the Act.
2. After reviewing the information you provided the Commission refuses to grant an exemption for the reasons mentioned in the accompanied statement.

**Name and title of person authorised to sign on behalf of the Commission:**

---

**Authorised Signature:****Date**

**FORM 34**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF DECISION OF COMMISSION REGARDING  
EXEMPTION IN RESPECT OF PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31(4), Rule 25(5))

**Concerning:**

(Name and file number of applicant association:)

1. The above named applicant association has applied to the Commission on \_\_\_\_\_  
\_\_\_\_\_ for an exemption in respect of professional rules  
as contemplated in section 31(1) of the Act.
2. The Commission gives notice of its decision in terms of section 31(4)(c) of the  
Act of its decision to grant \* / refuse\* the exemption concerned.

**Name and title of person authorised to sign on behalf of the Commission:****Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable.

**FORM 35**

NAMIBIAN COMPETITION COMMISSION  
**CERTIFICATE OF CLEARANCE IN RESPECT  
OF PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31, Rule 25(6))

**To:**

(Name and file number of applicant association:)

1. You have applied to the Commission on: \_\_\_\_\_ for an exemption in respect of professional rules, as contemplated in section 31(1) of the Act.
2. In the opinion of the Commission, based on the facts in its possession, the professional rules concerned do not contain a restriction that has the effect of preventing or substantially lessening competition in a market as contemplated in section 31(1) of the Act.

**Name and title of person authorised to sign on behalf of the Competition Commission:**

**Authorised Signature:**

**Date**

**FORM 36**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF PROPOSED REVOCATION OF EXEMPTION  
IN RESPECT OF PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31(5), Rule 26(1))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of applicant association:)

1. The Commission has issued an exemption certificate to the above named applicant association on \_\_\_\_\_.
2. The Commission considers, after it has consulted the responsible Minister concerned, that the professional rules \* / part of the professional rules as indicated on the attached sheet\* should no longer be exempt under section 31(1) of the Act, and gives notice that it intends to revoke the exemption concerned.
3. You may submit to the Commission, within 30 days as from the date of this notice, any written representations that you may wish to make in regard to the proposed revocation of the exemption.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable.

**FORM 37**

NAMIBIAN COMPETITION COMMISSION  
**REVOCATION OF EXEMPTION IN RESPECT  
OF PROFESSIONAL RULES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 31(5), Rule 26(2))

**To:** \_\_\_\_\_

**Concerning:**

(Name and file number of applicant:)

1. The Commission has issued an exemption certificate\*to the above named applicant association on \_\_\_\_\_, and has given notice on \_\_\_\_\_ that it intends to revoke the exemption concerned.
2. The Commission hereby, in terms of section 31(5) of the Act, revokes the exemption concerned on the ground that the Commission considers that the professional rules\* / part of the professional rules as indicated on the attached sheet\* should no longer be exempt under section 31 of the Act.

**Name and title of person authorised to sign on behalf of the Commission:**

**Authorised signature:**

**Date:**

**Please note:**

\* Delete whichever is not applicable.

**FORM 38**

## NAMIBIAN COMPETITION COMMISSION

**MERGER NOTICE**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 44(1), Rule 28)

**To:** The Competition Commission**From:**

(Name, address and contact numbers of undertaking reporting the merger)

1. Please take notice of a proposed merger as contemplated in section 44(1) of the Act involving the reporting undertaking as -

the primary  
acquiring undertaking

the primary  
target undertaking

and involving

\_\_\_\_\_, as

the primary  
acquiring undertaking

the primary  
target undertaking.

2. A summary of the effect of the proposed merger on employment, is attached as Schedule 1 to this Notice.
3. Particulars of the merger are set out in the attached Statement of Merger Information in the form of Form 38, which forms part of this Notice.
4. Notices and other documents concerning this merger may be served on the following person at the address and contact number shown below:

For office Commission file number:  
Use only:

Date filed:

\_\_\_\_\_

\_\_\_\_\_

(Name and file number of merger:)

**FORM 38 (Continue)****Certification of Accuracy:**

I, \_\_\_\_\_,  
have prepared, or supervised those who prepared, this Merger Notice.

To the best of my knowledge, the information contained in this document, and the attachments to it, is true, correct and complete in terms of the Act and Rules made in terms thereof, except to the extent that I have indicated -

- (a) that requested data is not available in books or records, and reasonable estimates have been used instead; or
- (b) complete information has not been provided because it is unavailable, in which case I have attached an affidavit sworn by me, explaining why the information is unavailable.

I understand -

- (a) that it is an offence in terms of the Act to provide false information to the Commission in any manner, including in these documents; and
- (b) that section 63 of the Act provides for a penalty of a fine, or imprisonment, or both, if I am found guilty of knowingly providing false information to the Commission.

**Name and title of person authorised to sign:**

\_\_\_\_\_

**Authorised Signature:**

**Date:**


For office Commission file number: Use only: _____	Date filed: _____
--	----------------------

**Please note:**

1. Two copies of this form, and Schedule 1 as noted, together with a completed Statement of Merger Information in Form 38 must be filed in accordance with Rules 27 and 28.
2. Complete and sign the Statement of Accuracy on the second page.
3. If any required information is not available, please attach a sworn affidavit explaining why that information is unavailable.
4. An approval or conditional approval of a merger may be revoked, if it is subsequently discovered that this Notice does not provide correct and complete information.

**FORM 39**

NAMIBIAN COMPETITION COMMISSION  
**STATEMENT OF MERGER INFORMATION**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 44, Rule 28)

**To:** The Competition Commission

**From:**

(Name of undertaking filing this Statement)

1. The undertaking filing this statement is:

The primary acquiring undertaking

The primary target undertaking

2. In a separate document, titled Schedule 2, provide the following information in the order listed in subparagraphs (a) to (h):

- (a) State the name and principal business address of the party filing this Notice.
- (b) State the name and principal business address of all undertakings directly controlling you.
- (c) List the name and principal business address of each undertaking directly or indirectly controlled by each undertaking referred to in subparagraph (b).
- (d) List the name and principal business address of each undertaking you directly or indirectly control.
- (e) If you are an acquiring party, and you or any of the undertakings controlling you are owned or controlled by historically disadvantaged persons as defined in section 1 of the Act, state the name(s) of the person(s) and the nature and extent of their ownership or control.
- (f) State your annual turnover in, into or from Namibia for your preceding financial year and the range of months covered by your financial year.
- (g) State the value of your assets in Namibia as of the end of your preceding financial year, and as of the date of the Merger Notice.
- (h) State your annual turnover in, into or from Namibia as of the date of the Merger Notice.

For office Commission file number:  
 Use only:

Date filed:

\_\_\_\_\_



**FORM 39** (Continue)

3. In a separate document, titled Schedule 3, provide the following information in the order listed in subparagraphs (a) to (e):
- (a) Indicate whether the party filing this Notice is -
    - (i) acquiring assets, shares, or other interests;
    - (ii) selling assets, shares, or other interests;
    - (iii) acquiring and selling assets, shares, or other interests.
  - (b) Indicate whether the transaction involves -
    - (i) foreign direct investment;
    - (ii) a management buy-out;
    - (iii) a buy-back of shares.
  - (c) Describe the merger, including the parties to the transaction; the assets, shares, or other interests being acquired; whether the assets, shares, or other interests are being purchased, leased, combined or otherwise transferred; the consideration, the contemplated timing for any major events required to bring about the completion of the transaction; and the intended structure of ownership and control of the completion of the merger.
  - (d) Unless you have submitted a report addressing the issues listed below, please provide the following details:
    - (i) the estimated market shares of the merging parties and their competitors;
    - (ii) information concerning barriers to entry, such as regulatory requirements, capital requirements and sunk costs, the time it will take for potential entrants to enter the market, the names and contact details of entrants to the market during the past three years;
    - (iii) information concerning import competition, such as existing import duties;
    - (iv) countervailing power (customers or suppliers).
  - (e) If you are relying on a “failing undertaking defence”, please include the following information:
    - (i) financial information demonstrating that the undertaking will be unable to meet its financial obligations in future;
    - (ii) information concerning efforts taken to elicit reasonable alternative offers;
    - (iii) information indicating that the failing undertaking would reasonably be expected to exit the market unless the merger is implemented.
4. In a separate document, titled Schedule 4, provide the following information in the order listed in subparagraphs (a) to (e):
- (a) Identify each product that you or another acquiring undertaking (or target undertaking, if applicable) sell, and each service you or that other undertaking provide in, into or from Namibia. In addition, identify any products or services that you believe are considered by buyers as reasonably interchangeable with, or a substitute for, a product or service provided

**FORM 39** (Continue)

in, into or from Namibia by another party to the merger. Use the 5 digit standard industrial codes to identify products, if possible.

- (b) For each identified product or service, state the geographical area(s) in Namibia in which you sell.
  - (c) For each identified product or service, identify, and provide contact details for the five producers or providers in each identified geographic area with the largest estimated turnover in value, and their estimated share of the total turnover during the last full 12 months.
  - (d) For each identified product or service, state your turnover in each identified geographic area during the last full 12 months.
  - (e) For each identified product or service, identify and provide contact details for your five customers in each identified geographic area with the largest aggregate purchases in value during the last full 12 months.
5. In a separate document, titled Schedule 5 -
- (a) state the name of any other acquiring undertaking (or target undertaking, if applicable), that sells to you;
  - (b) identify each product or service sold;
  - (c) for each such product or service, show the value of that product or service sold during your preceding financial year.

**Certification of Accuracy:**

I, \_\_\_\_\_, have prepared, or supervised those who prepared, this Statement of Merger Information.

To the best of my knowledge, the information contained in this document, and the attachments to it, is true, correct and complete in terms of the Act and Rules, except to the extent that I have indicated -

- (a) that requested data is not available in books or records, and reasonable estimates have been used instead; or
- (b) complete information has not been provided because it is unavailable, in which case I have attached an affidavit sworn by me, explaining why the information is unavailable.

I understand -

- (a) that it is an offence in terms of the Act to provide false information to the Commission in any manner, including in these documents; and
- (b) that section 63 of the Act provide for a penalty of a fine, or imprisonment, or both, if I am found guilty of knowingly providing false information to the Commission.

**Name and title of person authorised to sign:**

---

**Authorised Signature:****Date:****Please note:**

1. Attach to this Form the following items -
  - (a) the most recent version of all documents constituting the merger agreement;
  - (b) each report or other document assessing the transaction with respect to competitive conditions;
  - (c) any document, including minutes, reports, presentations and summaries, prepared for the Board of Directors regarding the transaction;
  - (d) your most recent business plan.
2. If any required information is not available, you must attach a sworn affidavit explaining why that information is unavailable.
3. Approval or conditional approval of a merger may be revoked if it is subsequently discovered that this Statement of Information is not accurate.
4. Until the Commission has reached a decision concerning the merger, you must submit any revised or final version of each document referred to in paragraph 1 above, as it becomes available.
5. When describing the merger, please indicate any relevant facts concerning the impact of the merger on employment, or other public interest issues contemplated in section 47(2)(a) to (h) of the Act.
6. You may include any other relevant information that you want the Commission to consider.
7. Approval or conditional approval of a merger may be revoked if it is subsequently discovered that this Statement of Information is not accurate.
8. Generally, information relating to this merger is not part of the public record while the Commission is considering the merger.
9. You have a right to identify information that you believe is confidential, by completing Form 1 and submitting it with this Statement.
10. If any required information is not available, please attach a sworn affidavit explaining why that information is unavailable.

**FORM 40**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF REFERRAL TO INSPECTOR FOR  
INVESTIGATION AND REPORT**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 47(3), Rule 29)

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of proposed merger:)

1. The Commission has received notification of the abovementioned proposed merger on \_\_\_\_\_.
2. Please note that the Commission has referred the particulars of the proposed merger to an inspector for investigation and a report in relation to the criteria referred to in section 47(1) of the Act.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:**

**FORM 41**

NAMIBIAN COMPETITION COMMISSION

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 47(7), Rule 30)

**To:** \_\_\_\_\_

**Concerning:**

(Name and file number of proposed merger:)
--

1. The Commission has received notification of the abovementioned proposed merger on \_\_\_\_\_.

2. Please note that the Commission has approved\* / conditionally approved\* / prohibited\* the proposed merger.

3. The approval\* / conditional approval\* of the proposed merger is subject to:

no conditions

the conditions listed on the attached sheet.

4. The reasons for the conditional approval\* / prohibition\* of the proposed merger are: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. 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.

**Name and title of person authorised to sign on behalf of the Commission:**

---

**Authorised signature:**

**Date:**

**Please note:**

\* Delete whichever is not applicable.

**FORM 42**

## NAMIBIAN COMPETITION COMMISSION

**NOTICE OF PROPOSED REVOCATION OF DECISION TO  
APPROVE IMPLEMENTATION OF PROPOSED MERGER**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 48(2), Rule 31(1))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of approved merger:)

1. The Commission has given notice of its decision to approve\* / conditionally approve\* the implementation of the above-mentioned approved merger on \_\_\_\_\_.
2. The Commission gives notice that it proposes to revoke its decision to approve\* / conditionally approve\* the implementation of the approved merger concerned on the ground that -
  - (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.\*
3. You may submit to the Commission, within 30 days as from the date of receipt of this notice, any written representations that you may wish to make in regard to the proposed revocation of the decision to approve\* / conditionally approve\* the implementation of the above-mentioned approved merger.

**Name and title of person authorised to sign on behalf of the Commission:****Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable.

**FORM 43**

## NAMIBIAN COMPETITION COMMISSION

**REVOCATION OF DECISION TO APPROVE  
IMPLEMENTATION OF PROPOSED MERGER**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 48(1), Rule 31(2))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of approved merger:)

1. The Commission has given notice on \_\_\_\_\_ that it intends to revoke its decision to approve\* / conditionally approve\* the implementation of the above-mentioned approved merger.
2. The Commission hereby, in terms of section 48(1) of the Act, revokes its decision to approve\* / conditionally approve\* the implementation of the above-mentioned approved merger on the ground that -
  - (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.\*

**Name and title of person authorised to sign on behalf of the Commission:****Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable.



**FORM 44**

## MINISTRY OF TRADE AND INDUSTRY

**NOTICE OF APPLICATION FOR REVIEW OF DECISION OF COMMISSION  
IN RELATION TO PROPOSED MERGER**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 49(2), Rule 32(1))

**Concerning:**

(Name and file number of proposed merger:)

1. Please take notice that the Commission has on \_\_\_\_\_ approved\* / conditionally approved\* / prohibited\* the proposed merger.
2. Notice is hereby given that I have on \_\_\_\_\_ received an application from \_\_\_\_\_  
\_\_\_\_\_ for review of the decision of the Commission in relation to the merger concerned.
3. The nature of the review is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Interested parties are invited to make written submissions, within 30 days after the date of this notice, to me in regard to any matter to be reviewed.

\_\_\_\_\_  
**Signature of Minister of Trade and Industry**\_\_\_\_\_  
**Date****Please note:**

\* Delete whichever is not applicable.

**FORM 45**

## MINISTRY OF TRADE AND INDUSTRY

**NOTICE OF DETERMINATION MADE BY MINISTER IN  
RELATION TO REVIEW OF DECISION OF COMMISSION  
IN RELATION TO PROPOSED MERGER**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 49(4), Rule 32(2))

**To:** \_\_\_\_\_**Concerning:**

(Name and file number of proposed merger:)

1. Please take note that I have on \_\_\_\_\_  
received from \_\_\_\_\_  
\_\_\_\_\_ an application for review of the decision of the Commission in relation to the merger concerned.
2. Notice is hereby given that I have determined to -
  - (a) overturn the decision of the Commission;\*
  - (b) amend the decision of the Commission by ordering the following restrictions\* / including the following conditions\*;\*
  - (c) confirm the decision of the Commission.\*
4. The reasons for the determination contemplated in paragraph 2 above are set out on the attached sheet.

**Name and title of person authorised to sign on behalf of the Commission:**

\_\_\_\_\_

**Authorised signature:****Date:****Please note:**

- \* Delete whichever is not applicable.

**FORM 46**

## NAMIBIAN COMPETITION COMMISSION

**APPLICATION TO COURT IN TERMS OF SECTION 51**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 51, Rule 33)

**Concerning:**

(Name and file number of proposed merger:)

1. The Commission on reasonable grounds believes that the above mentioned merger is being\* / has been implemented\* in contravention of the provisions of Chapter 4 of the Act, and therefore applies to the Court for -
  - (a) an interdict restraining the parties involved from implementing the merger;\*
  - (b) an order directing any party to the merger to sell or dispose of in any other specified manner, any shares, interest or other assets it has acquired pursuant to the merger;\*
  - (c) declaring void any agreement or provision of an agreement to which the merger was subject;\*
  - (d) the imposition of a pecuniary penalty of N\$\_\_\_\_\_ - \_\_\_\_.\*
2. The reasons of the Commission for the belief mentioned in paragraph 1 above are set out on the attached sheet.

**Name and title of person authorised to sign on behalf of the Commission:****Authorised signature:****Date:****Please note:**

\* Delete whichever is not applicable.

**FORM 47**

NAMIBIAN COMPETITION COMMISSION

**NOTICE FROM CHAIRPERSON OF COMMISSION  
REGARDING SUFFERING OF ALLEGED DAMAGES**

Competition Act, 2003 (Act No. 2 of 2003)

(Section 54, Rule 37)

**Concerning:**

(Name and file number of complaint:)
--------------------------------------

1. The Commission has received a complaint against the above named respondent on \_\_\_\_\_ and has given notice of its proposed decision on \_\_\_\_\_.

2. The complainant has not been awarded damages in the attached consent agreement, and I hereby certify -

(a) that the conduct on which the action is based has on \_\_\_\_\_ been found by the Court, following proceedings instituted by the Commission in terms of section 38, to be an infringement of the Part I or the Part II prohibition;\*

(b) that a consent agreement was confirmed in accordance with section 40 in relation to the conduct on which the action is based, and that no award for damages is provided for in that agreement for the benefit of the plaintiff, for the following reasons:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_\*

(c) that, following an investigation by the Commission in accordance with Part IV of Chapter 3 into the conduct on which the action is based, the Commission has decided not to take any action contemplated in section 38, for the following reasons: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- (d) that the Commission, having received a complaint or a request to investigate an alleged infringement of the Part I or the Part II prohibition in respect of the conduct on which the action is based, has in terms of section 33(2) decided not to conduct an investigation, for the following reasons:

---

---

---

---

---

---

---

---

---

---

\*

**Signature of chairperson:**

**Date:**

**Please note:**

\* Delete whichever is not applicable.

## ANNEXURE B

## CATEGORIES OF SMALL UNDERTAKINGS

(Rule 34)

Column 1	Column 2	Column 3	Column 4	Column 5
Sector or Sub-sectors	Size or Class	Total full-time equivalent of paid employees Less than	Total Annual Turnover Less than	Total gross asset value (fixed property excluded) Less than
Agriculture	Medium	100	N\$4.00 m	N\$4.00 m
	Small	50	N\$2.00 m	N\$2.00 m
	Very small	10	N\$0.40 m	N\$0.40 m
	Micro	5	N\$0.15 m	N\$0.10 m
Mining and quarrying	Medium	200	N\$30.00 m	N\$18.00 m
	Small	50	N\$7.50 m	N\$4.50 m
	Very small	20	N\$3.00 m	N\$1.80 m
	Micro	5	N\$0.15 m	N\$0.10 m
Manufacturing	Medium	200	N\$40.00 m	N\$15.00 m
	Small	50	N\$10.00 m	N\$3.75 m
	Very small	20	N\$4.00 m	N\$1.50 m
	Micro	5	N\$0.15 m	N\$0.10 m
Electricity, gas and Water	Medium	200	N\$40.00 m	N\$15.00 m
	Small	50	N\$10.00 m	N\$3.75 m
	Very small	20	N\$4.00 m	N\$1.50 m
	Micro	5	N\$0.15 m	N\$0.10 m
Construction	Medium	200	N\$20.00 m	N\$4.00 m
	Small	50	N\$5.00 m	N\$1.00 m
	Very small	20	N\$2.00 m	N\$0.40 m
	Micro	5	N\$0.15 m	N\$0.10 m
Retail and motor trade and repair services	Medium	100	N\$30.00 m	N\$5.00 m
	Small	50	N\$15.00 m	N\$2.50 m
	Very small	10	N\$3.00 m	N\$0.50 m
	Micro	5	N\$0.15 m	N\$0.10 m
Wholesale, trade, commercial agents and allied services	Medium	100	N\$50.00 m	N\$8.00 m
	Small	50	N\$25.00 m	N\$4.00 m
	Very small	10	N\$5.00 m	N\$0.50 m
	Micro	5	N\$0.15 m	N\$0.10 m

Catering, accommodation and other trade	Medium	100	N\$10.00 m	N\$2.00 m
	Small	50	N\$5.00 m	N\$1.00 m
	Very small	10	N\$1.00 m	N\$0.20 m
	Micro	5	N\$0.15 m	N\$0.10 m
Transport, storage and communications	Medium	100	N\$20.00 m	N\$5.00 m
	Small	50	N\$10.00 m	N\$2.50 m
	Very small	10	N\$2.00 m	N\$0.50 m
	Micro	5	N\$0.15 m	N\$0.10 m
Finance and business Services	Medium	100	N\$20.00 m	N\$4.00 m
	Small	50	N\$10.00 m	N\$2.00 m
	Very small	10	N\$2.00 m	N\$0.40 m
	Micro	5	N\$0.15 m	N\$0.10 m
Community, social and personal services	Medium	100	N\$10.00 m	N\$5.00 m
	Small	50	N\$5.00 m	N\$2.50 m
	Very small	10	N\$1.00 m	N\$0.50 m
	Micro	5	N\$0.15 m	N\$0.10 m

---