



WELCOMING REMARKS

BY

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COMMISSIONER OF THE

NAMIBIAN COMPETITION COMMISSION

BOARD OF COMMISSIONERS

AT THE ANNUAL STAKEHOLDERS GALA DINNER

HILTON HOTEL, WINDHOEK

05 DECEMBER 2013

Master of Ceremonies

Honourable Deputy Minister of Trade and Industry, Tjekero Tweya

Chairman of the Committee on Competition Law and Policy, OECD,

Dr Frederic Jenny

Chairperson of the Competition Law Forum in Namibia, Mr Hans-

Bruno Gerdes

Lead Private Sector World Bank Specialist, Mr Chunlin Zhang

Fellow Commissioners

Staff Members of the Commission

Members of the Media

Distinguished Guests

Ladies and Gentlemen

It gives me great pleasure to welcome you to this august event held in honour of our stakeholders as a gesture of the Commission's gratitude for your support throughout the year.

The month of December is very significant for two reasons principally in the sense that it also marks the anniversary of the Commission. On Monday the 9th December, the Commission will be in existence for four years. Starting off with only one employee the CEO, Mr Mihe Gaomab the Second who has been at the helm of the operational and administrative execution of the Commission activities, I am proud to declare that we are now a fully fledged functioning institution, comprising of a operational architecture and a productive staff complement of close to 30.

I have full confidence that with the continued confidence in the work that the Commission does, that we shall achieve more significant developments as we make our five year anniversary next year on the 9 December 2014.

Today, the 5th of December 2013 is equally significant, as competition authorities all over the world celebrate the World Competition Day, with this year's theme being the *Adverse Impact of Cartels on the Poor*. On this day, in 1980, the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, which emphasise the significance of competition law to developing countries, was also adopted.

It is research widely that the implementation of the Competition Policy and Law can have a significant impact on business competitiveness in the markets which can aid in employment generation and poverty reduction. Competition policy and law in any economy can create a conducive fair and spirited competition in markets and can further contain the prevalence and impact of cartels.

Competition Law when implemented well, as we have done proudly in Namibia can have multifaceted impact on the economy as it can ensure competitive pricing and wider choice of goods for consumers and that it can

also protect small operators from the perspective of mainly small and medium sized businesses, and can also aid in sustaining employment.

We have reasonable evidence in Namibia that the promotion of fair competition gives an opportunity to create the necessary conditions for a prosperous economy as it establishes new companies, and can expand the existing ones and make them thrive so as to affect positively the creation of business capacity, the stimulation of a competitive markets and employment creation.

As such, the Namibian Competition Commission was established on the 9 December 2009 specifically in terms of the Competition Act 2 of 2003 to promote competitive market conditions through investigation and prosecution of anti-competitive activities, reviewing and approving of mergers and exemption applications.

The Competition Act is comprehensive and prohibits restrictive business practices, including agreements between undertakings to fix prices, engage in collusive tendering, set minimum resale prices, market allocation or limit

production. The scope of supervision is multifaceted and central to the overall economic transformation.

As the principal regulatory authority in providing an enabling environment for business to compete fairly, the Commission already faced numerous judicial challenges, including the Wal-Mart case, and our decisions have enabled us to develop jurisprudence in the competition arena.

Since inception in 2009, the Commission has handled high profiled and significantly valued mergers. Some of the profiled cases includes Afrisam-Ohorongo merger (which was prohibited or declined), Capricorn Investment Holdings-ABSA merger (banking, which was withdrawn), Leo (Powercom)-Telecom merger (of which the conditions were imposed to ensure market reform and behaviour of the ICT players), Exxaro Base Metals and Wilrou-Glencore merger (which allowed for local value mineral beneficiation), EBH-DCD merger (that allowed for a more market level playing field and participation for docking facilities and employment protection at the Walvis Bay port), the SOS – EMED medical emergency services (which was recently prohibited or declined), and the Agra Limited and A. Rosenthal (Pty) Ltd and

Kalahari Arms and Ammunition (Pty) Ltd trading as Safari Guns and Outfitters which was approved with behavioral and structural conditions.

In line with our work on effective competition supervision, we have recently also prohibited a merger in the gas sector and also in the construction industry.

Overall, I am proud to indicate that the merger regulation has been effective since inception of which in a total of close to a record 250 mergers, 188 were approved, 19 approved with conditions, and 4 are prohibited and 2 are withdrawn.

I have to admit that the Commission still needs more work to be done around the enforcement arena. We are dealing with over 20 cases on the enforcement of restrictive business practices but we have yet to prove a case in court as competition enforcement.

One of the reasons why we did not make inroads on enforcement is that the Act did not cover sufficient provisions such as the absence of a business whistle blowing instrument called the Corporate Leniency Policy to ensure proper and effective competition enforcement. We are therefore reviewing the Act to ensure its relevance and to align our Act with evolving developments in the operationalisation of competition law in Namibia.

We are also comforted that we have put in place research capacity at the Commission to inform more on our understanding on competition to our stakeholders and to our reporting line Ministry of Trade and Industry. In line with the relevant provisions of the Act, Honorable Deputy Minister is assured of our role as the Competition Advisor to the Minister of Trade and Industry on competition policy. The Commission also assists the Ministry on their mandate to ensure domestic trade competitiveness and effective internal market regulation.

We are encouraged that the Commission has a sound and sustained working relationships through the Memorandums of Understanding (MoUs) with sector regulators like the Bank of Namibia for the financial industry,

Electricity Control Board for electricity, and the Communications Regulatory Authority of Namibia for telecommunication.

We have also concluded with the Anti Corruption Commission to fight joint business corrupt activities and we are pursuing an MoUs with the Namibia Tender Board, the Namibian Tourism Board, the Namibia Trade Forum, Namibian Manufacturing Association and the Namibian Financial Institutions Supervisory Authority (NAMFISA). Those kinds of MoUs entail that we are together on evaluating and enforcing pro-competitive issues in those sectors to deter widespread anti-competitive practices.

There is also a new evolving issue coming up regarding how the SOEs in Namibia are conducting competitively, which is called a competitive neutrality function. This means that the public entities should operate in such a way that they do not drive out private players. The SOE's function are very necessary but their competition behaviour should be complementary to private sector operators in terms of proper and fair competitive practices. We are about to launch research intelligence on the matter of which it shall be key priority areas to focus on for next year.

In line with the fast-moving national, regional and international trends on innovating the implementation of our law that seeks future solutions to current competition concerns, the Commission do always remain relevant. Therefore, we remain closely cooperative with the Competition Commissions of South Africa, Zambia, Botswana and Zimbabwe to learn more on capacity building on cross border merger and anti competitive practices. We make our relevance felt more through attending conferences and workshops at the International Competition Network, a global informal coming together of competition authorities and the African Competition Network.

Allow me to conclude that I look forward positively to the workings of the Commission in 2014. I remain convinced that we shall play a strong competition advocacy role to the stakeholders to make the Commission's work as defined in the Act a household name in Namibia and to explain readily and proactively on our work activities which is highly technical. This is more pressing as we have started on reviewing our strategic plan for the next three years.

I am proud to say indeed that in 2009, there was nothing about competition law, or competition skills in Namibia. Now we got 30 Namibians, not a single expatriate – but Namibians who are carrying the Act. We are living proof that we can actually capacitate Namibians skilfully and resourcefully to tackle the brain intensive work on the administration of the competition law.

With a competent, dedicated and skilled staff, we can only get the work done to assist our stakeholders particularly the businesses and the public on any cases that involves price abuse and bad behaviour in the market place in the year 2014.

With these welcoming remarks, we wish you a good informative stakeholder's dinner and a blessed festive season ahead and a equally productive year 2014.

I thank you.