



REPUBLIC OF NAMIBIA

MINISTRY OF INDUSTRIALISATION AND TRADE

“Growth at Home”

NATIONAL COMPETITION POLICY

2020 - 2025

OUTLINE OF THIS POLICY DOCUMENT

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LIST OF ABBREVIATIONS

MIT	Ministry of Industrialisation and Trade
NTF	Namibia Trade Forum
NACC	Namibian Competition Commission
SADC	Southern Africa Development Community
SACU	Southern Africa Customs Union
NDP	National Development Plan
SME	Small and Medium Sized Enterprise
SOE	State- Owned Enterprise
IIP	Infant Industry Protection
EU	European Union
EPAs	Economic Partnership Agreement
NIC/NIDA	Namibia Investment Centre Namibia Industrial Development Agency
MOF	Ministry of Finance
WTO	World Trade Organisation
NCP	National Competition Policy

ACKNOWLEDGEMENT

The National Competition Policy has been a consultative effort between various stakeholders, individuals and representatives from various O/M/As through joint meetings of the Technical Committee, Working Groups, Plenaries, and Workshops.

I wish to acknowledge the commitment and dedication in preparing this policy and acknowledge the leadership role that the Minister of Industrialisation and Trade, provided in ensuring the finalization of this document in line with government procedure.

Thank you.

Ambassador Steve. V. Katjuanjjo

Executive Director: Ministry of Industrialisation and Trade

FOREWORD

This document presents the first National Competition Policy for Namibia. Competition Policy is a core tenet of modern regulatory policy and presents a critical plank of a country's overall microeconomic reform agenda. Competition policy maximises total economic welfare as it has the central objective of promoting efficient and fair markets in the economy.

The policy provides an overarching framework to imbue competition policy, legislation and rules within the national development frameworks to support long term national objectives. As articulated in the National Development Plans and Vision 2030, these are sustained economic growth, employment creation, competitiveness, industrialisation, poverty reduction, reduced inequalities in income, gender, and between regions and the promotion of economic empowerment.

Tectonic shifts and ruptures in technological, economic, political and ideological spheres have given rise to phenomenal global changes over the past 30 years, much akin to the 19th Century's Industrial Revolution. To counter this, international best practises have and are constantly being developed to ensure that countries develop into internationally competitive markets and investment areas. Developing competition and economic regulatory institutions are thus part of the toolkit to ensure much needed market support institutions which may include property rights, macroeconomic institutions, institutions for social insurance and conflict management institutions.

Structural change is increasingly being recognised as an important facet of economic growth and development, with concomitant positive effects on poverty reduction. A key ingredient of structural change is the establishment of a national competition policy. Competition policy drives greater economic efficiency and productivity, which positively enhances consumer welfare and poverty alleviation through sustainable development. Supported by an appropriate legislative framework, competition policy promotes efficiency to ensure the lowering of production costs, consumer prices and downstream businesses' access prices whilst innovation and enhanced service levels are encouraged. A beneficially symbiosis between competition and industrial policies is therefore a paramount construct in our national development and industrialisation ambitions.

Namibia is a member of SACU, SADC and the WTO and is engaged in negotiations of an Economic Partnership Agreement with the EU. Being a party to these economic and trading arrangements implies rights and obligations. These types of arrangements also raise concerns that, as barriers to trade and investment reduce, the gains from such liberalisation may be at risk by anticompetitive practises to the detriment of consumers. Similarly, the global merger wave's phenomena can generate efficiency gains, but it can also disrupt market competition and lead to negative effects on consumers and severely constrain dynamic dependencies between markets, especially for SME suppliers and distributors in the supply chain. It is pertinent to ensure that merger activities, especially cross-borders mergers, do not increase systematic risk in the economy. There is thus a growing realisation that mutually supportive trade, investment and competition policies can contribute to sustained economic

development and that effective competition policy helps to ensure that the benefits of liberalisation and market-based reforms flow through to all citizens.

The implementation of competition is not a new phenomenon to our country, as evidenced by the establishment of a Competition Commission in 2009, following the enactment of an Act of Parliament in 2003. However, this evolved in the absence of a specific national policy framework. The adoption of an effective competition strategy requires the practical combination and optimal amalgamation of competition policy, rules and legislation. Therefore, the formulation and presentation of this policy document would fill in the missing gap.

Lucia Ipumbu, MP

Minister of Industrialisation and Trade

EXECUTIVE SUMMARY

Designing a national competition policy to ensure economic growth and development is no easy task. Competition policy can be broadly defined as a governmental policy that promotes or maintains the level of competition in markets, and includes governmental measures that directly affect the behaviour of enterprises and the structure of industry and markets.

No universal competition policy blueprint exists as every economy is different and such a policy must be contextualised to ensure that it lends itself to the prevailing socioeconomic and political nuances of the country. In this regard the adoption and application of a national competition policy must be tailored to the Namibian context so as to maximise its benefits, minimise costs and to be administratively feasible.

Pertinent issues manifested themselves in the design of this policy:

- a) How should competition policy be applied in Namibia, given the need to:
 - maintain incentives to invest (and to generate, import or disseminate technology) for both local and foreign firms and-
 - preserve efficiency arising from economies of scale and scope, while avoiding excess capacity and waste in small economies with limited resources?
- b) How much can competition policy contribute to the urgent problem of maintaining Namibian competitiveness in national and international markets – or conversely, might its application reduce competitiveness?
- c) What is the relevance of merger control in Namibia?

The background of such issues is a result of peculiarities evident in developing and smaller economies in respect to competition policy. Such economies tend to exhibit markets with lower levels of competitiveness than large economies and mostly can only support a small number of competitors. In certain instances, in the absence of domestic competitors, there is an overreliance on imports as a source of competition. In addition, smaller economies tend to have highly concentrated market structures and natural monopolies and therefore may be more prone to market failure. This calls for a need for the adoption of active regulatory measures and instruments, including price monitoring and additional regulation, if consistent with the national competition policy. In addition, there continues to be remnants of the exploitative colonialist system and therefore special considerations must be given to previously disadvantaged Namibians when determining the extent to which reliance on pure market outcomes will lead to welfare gains that trickle down or whether market imperfections will require government intervention.

Finally, the adoption of national competition policy must be framed within the context of its regional and global trading relationship ambitions. A national competition policy design must fully appreciate the possibility and reality of the inequality of the international trading system. It therefore must recognise the necessity of protecting certain sectors in the interest of industrialisation, food security, employment and SMEs and entrepreneurial opportunities for Namibians.

This policy document therefore contains sections that outline the specific principles, aims and objectives that will guide Namibia's competition policy framework over the next ten years. The document also outlines the institutional setting required to ensure the successful implementation of the policy.

1: INTRODUCTION

- 1.1 The Namibian Constitution's Article 98 postulates "the economic order based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity". Economic activity in Namibia thus assumes and is conducted through various forms of ownership that is; public, private, joint public-private, co-ownership, co-operatives and at the small and micro scale.
- 1.2 Namibia's Vision 2030, which serves as the country's long-term vision in respect of developmental programmes and strategies also supports market dynamism as a principle. The Vision is designed to promote the creation of a diversified open market economy, with a resource-based industrial sector and commercial agriculture, placing great emphasis on skills development. The Vision also promotes competitiveness in the export sector in terms of product quality and differentiation. The Vision further promotes the creation of economic structures to eliminate marginalisation between different interests and abilities.
- 1.3 Furthermore, the country's National Development Plans and the 2012 Industrial Policy are based on open-market economy foundations wherein the public and private sectors are both equally important in fostering the creation of income, fair trading, employment, economic inclusiveness and overall economic growth.
- 1.4 To this end, the design and framing of Namibia's economic competition framework is pertinent to ensure that the country can compete more effectively within a climate of open trade and inherent market dynamisms. Although an economic competition framework to foster appropriate microeconomic reforms is thus vital and recognised as such by the Namibian government, a policy vacuum exists in that no explicit competition policy exists in the country.
- 1.5 A National Competition Policy (NCP) is the body of policy measures and a legal framework under which enterprises in the private and public sector can carry out their economic activities freely based on free, effective and fair competition. A National Competition Policy is based on the assumption that a competitive market leads to increased production efficiency under which the condition that the prevailing price equals the total production unit cost and on the allocation and consumer efficiency- whereby the condition that the price equals marginal cost is attained. In addition, the assumption that economic regulation can also co-exist with competition policy even though this might involve regulation of utility prices is equally pertinent for a National Competition Policy.

- 1.6 Despite the absence of a National Competition Policy, the Namibian Government enacted the Competition Act No 2 in 2003, to promote fair competition. However, despite this outcome, the presence of national legislation is inadequate and ineffective to deal with the increasing complexity of the market as well as ensuring that markets work to achieve efficiency and equity goals of society.

2. POLICY RATIONALE

- 2.1 The formulation of the NCP is ascribed within the structure and nature of the Namibian economy. To this end, competition will work at its optimum when there is a stable, certain and well understood legislative framework and effective design principles underpinning certain markets.
- 2.2 A NCP will be important to ensure that Namibian markets, of which many are relatively concentrated due to the small demographics and country size, operate as efficiently as possible to the benefit of consumers and enterprises. Major sectors such as the production/processing of brewing, cement, dairy, meat processing, milling (including animal feeds) and poultry are each dominated by single firms.
- 2.3 Price competition in key Namibian markets depicts a divergence between efficiency values and market values. This implies that price margins between prices and production costs differ between traded and nontraded sectors. In the tradable sector, there is little divergence reflecting the high degree of openness of the economy. However in the non-tradable sector and especially the privately controlled sectors, there is wide divergence between efficiency values and market values presumably due to limited competition. This has wide economic losses for the Namibian economy, including impact on consumer welfare. Limited price competition in a sector also hurts other economic sectors procuring goods and services from it. Invariably private sector growth and investment is thus severely constrained.
- 2.4 In certain Namibian markets, especially in utility networks-water and electricity, ports and airports, there is one entity operating in an environment with little competitive pressure. State owned enterprises hold between 90-100% market shares in electricity generation and import, fixed-line telecommunication services, postal services (other than courier services), air operation infrastructure, water transport infrastructure, railway transportation, operation of road infrastructure, water supply and mobile communications. A NCP is one instrument that the government may utilise to discipline such markets in public interest and to ensure that adequate safeguards are in place to constrain any attempt to exercise market power, thereby limiting any adverse impact on consumers and/or suppliers/producers in these sectors.

- 2.5 State involvement in markets in Namibia is also underpinned in the operation of many economic activities to supply goods and services to consumers. State owned enterprises (SOEs) are found in both infrastructure sectors (which are not readily open for private sector) and other sectors such as tourism and fishing which are more open to private companies. In these instances, the playing field may not be level between the public and private competitors and therefore the NCP is one guarantee to ensure fair market outcomes.
- 2.6 In Namibia there are also regulations or policies that can have the effect of limiting competition, even though their purpose is to achieve another policy objective. Key instruments of Industrial Policy such as Infant Industry Regimes or Quantitative Imports Restrictions may have the objective of fostering development of nascent indigenous firms, but may also lead to monopolistic pricing behaviour by the protected incumbents. On the other hand, price determination is present in some sectors such as petrol and diesel as well as in maize and wheat. These types of regulations and policies can foster barriers to entry, inhibiting competitors from entering the markets, high prices and reduced consumer welfare. Moreover price setting and import restrictions could also have adverse effects on downstream sectors with respect to their competitiveness in the various elements of their value chains. In these cases, regular competition impact assessments can ensure that the overall public benefit continues to be enhanced by these regulations or policies, and not diminished.
- 2.7 An effective National Competition Policy aims to deal with all these issues

3. VISION AND MISSION

The Vision of the NCP is:

Competition policy plays a central role to stimulate economic growth and structural change through fostering a positive relationship between competition and increased productivity and productive capacity in the economy.

3.2 The Mission Statement

The Mission of the NCP is:

To provide appropriate policy and regulatory response, through the promotion and safeguarding of competition, aimed at challenges and opportunities manifesting themselves through globalization.

4 GOAL

4.1 *The overall goal of the NCP is to maintain the competition process and ensure effective competition in the Namibian economy. The achievement of the overall goal is a critical condition for the achievement of the Namibian society's economic wellbeing. Through its efforts to foster and facilitate increased competitiveness, ensuring a fair playing field for all market participants, promoting innovation, increasing consumer choices, improving the quality of goods and services and promoting Public Interest, the NCP therefore becomes an important factor to the economic development of Namibia.*

5: POLICY OBJECTIVES

5.1 One pillar of the game changers of the fifth National Development Plan (NDP 5) as well as the National Policy on Micro, Small and Medium Enterprises 2016-2021 is the strengthening of the business enabling environment. An increase in private investment, the enhancement of firm capacity and appropriate regulations to ensure well-functioning markets are key prerequisites to meeting the NDP 5 objectives of achieving inclusive, sustainable and equitable economic growth.

5.2 The Objectives of the NCP are thus:

- i. To ensure the preservation of the competition process in Namibia, to protect and promote competition in order to realise optimal efficiency and the maximisation of consumer welfare,
- ii. To provide guiding principles to different branches of the Government for an effective competition assessment of policies, legislation, government programmes,
- iii. To provide the basic framework of the parameters and the strategic policy considerations that will guide the review of competition legislation,
- iv. To address the regulatory and institutional infrastructure challenges that will ensure the effective implementation and enforcement of a competition law and policy,
- v. To promote, build and sustain a competition culture through creating awareness and targeted advocacy initiatives, imparting training and capacity building of stakeholders across the broad economic and social spectrum of Namibia on competition,
- vi. To foster competition in regulated sectors and promote institutional coherence for synergised cooperation between and among sectoral regulators and the competition regulator thereby minimising any jurisdictional grid locks, and

- vii. To address the regulatory and institutional infrastructural challenges that will ensure the effective implementation and enforcement of competition law and policy,

To maximise consumer welfare in terms of benefits accruing through wider choices, high quality of goods and services at competitive prices, and

- viii. To ensure that vulnerable sectors such as the micro, small and medium enterprises (MSMEs) are especially shielded from implications of existing and evolving anti-competitive policies and legislations.

6: PRINCIPLES OF COMPETITION POLICY

6.1 The NCP is underpinned by the following important guiding principles:

- i. **Limiting Anti-competitive Conduct:** Abuse of dominance and collusive conduct that substantially lessens competition in a market must be prohibited by national legislation. Activities that are prone to anti-competitive effects, such as price fixing should be identified and prohibited absolutely, unless authorised on public benefit grounds. Agreements between players enjoying supplier customer relationships that are anticompetitive must also be prohibited. Legislation should however have provisions in defence of arrangements which may be pro-competition or made by companies in the same corporate group or joint ventures when they do not unreasonably inhibit competition.
- ii) **Third Party Access to and Pricing for ‘Essential Facilities/Services’:** There should be a requirement that dominant infrastructure and intellectual property rights owners grant access to third parties their essential infrastructure and platforms on agreed reasonable and non-discriminatory terms and conditions aligned with competition principles. The rules for such access to essential services must be limited to services provided by firms that enjoy a legal monopoly, and or state-owned enterprises with a dominant position or natural monopoly in relation to the services. The access regime must also provide for arbitrated terms of access to services declared to meet this threshold requirement. The national competition legislation may be framed as the backstop for access regimes in the absence of such in network industries.

- iii. **Developmental Merger Control:** Generally, there should be a prohibition on mergers and acquisitions that substantially lessen competition in a market. Developmental merger control should balance anti-competitive effects of mergers with any pro-competitive and or wider public policy effects that may result from it. Based on a rule of reason, mergers should be permitted if the improvements in efficiency or on other public policy grounds resulting from a merger are greater than and offset its anti-competitive effects.
- iv. **Appropriate framework for cross-border investments and transactions:** A framework must be adopted to develop a more coherent, harmonized and transparent approach towards cross-border investments and transactions. This should review and modify any existing rules affecting complex cross-border acquisitions and transactions to ensure alignment to specific public interest issues raised by such transactions.
- v. **Price Oversight and Surveillance:** Price surveillance is essential to restrain monopolistic pricing behaviour that may be induced through public policy initiatives or current market structures. This is to be affected through appropriate provisions in the national legislation.
- vi. **Key Markets Investigations:** The national competition authority may investigate markets where particular features of the market may give rise to anti-competitive effects which might not be captured by other competition law rules.
- vii. **Fostering “Competitive Neutrality” between government and private business:**
There should be an adoption of a national framework to establish ‘the level playing field’ where government enterprises compete with private sector. Such a framework should guard against impairment of SOEs’ assets unduly as these agencies deliver important social services.
- viii. **Reforming regulations and policies that may restrict competition:** Competition Impact Assessments of new regulations, policies and laws should, where feasible, be undertaken by the Namibian Competition Commission, to help public authorities assess the effect on competition on any proposed new statutory or policy provisions. The NCP will encourage the adoption of a voluntary compliance policy in the private sector to promote competition in the market place.
- ix. **Aligning State Support Measures with Competition:** A framework to examine the impact of state support measures on competition conditions and how to minimize any distortive effects should be adopted.

- x. **Fostering the nexus of competition and government policies on, Micro, Small and Medium enterprises, Consumer Protection and Intellectual Property:**
Competition Policy should be carefully coordinated with other development policies such as the National Policy on Consumer Protection and the National Policy on Micro, Small and Medium Enterprises.
- xi **Harmonisation of Competition, Industrial and Trade policies:** Competition Policy should monitor the cost of industrial, regional trade integration and other trade policies - induced schemes such as Infant Industry Protection to ensure that they do not permanently outweigh the negative competition effects on consumers. The Competition Authority is to support trade policies through a monitoring function to ensure that rents to accrue from trade agreements are passed-on to domestic consumers and primary producers along the value chains. In general, Competition Policy should ensure that the 'policy space' of the country's nascent industrialisation ambitions is ensured and advanced.
- xii) **Adopting and promoting Sectoral Codes of Conduct:** In certain markets, an industry code to regulate the conduct of participants towards other participants in the industry or towards consumers may effectively deliver increased consumer protection and marketplace outcomes. Such codes may be mandatory or voluntary and may require the input of the Namibian Competition Commission. .
- xiii **Coordination with sectoral regulators:** Cooperation mechanisms between the national competition authority and sector regulator shall be rooted on a mutually beneficial mechanism where the sector regulators takes the lead role in economic and technical issues whilst the competition authority will lead in competition issues such as abuse of dominance, anti-competitive agreements, market enquiries, cartels and merger review. The competition functions that pertain to assuring non-discriminatory access to essential networks and controlling other forms of anti-competitive conduct and merger review may be shared with sector regulators. The cooperation must also be underpinned by consultation and coordination to ensure that the policies, decisions and remedial measures taken by one would not be violating the mandate of the other.
- xiv **Regional and international co-operation in the field of competition policy:** Where feasible, provisions related to competition policy in multilateral, bilateral and regional trade agreements shall be incorporated to help in preventing anti-competitive behaviour and potential anti-competitive cross-border conduct.

7: PUBLIC INTEREST

- 7.1 The National Competition Policy shall have broader objectives than economic efficiency alone. This is to be embodied within the 'Public Interest' objective.
- 7.2 Some of the critical elements to underpin Public Interest within the National Competition Policy are the safeguarding of investment and employment, stability and growth of the domestic market; ensuring freedom of economic action or fairness; to control for concentration of economic power; enhance the competitiveness of the Namibian economy; to promote both the interest and market opportunities for small firms; promoting a greater spread of ownership-especially for 'historically disadvantaged'; protecting the interests of consumers and consumer safety, public health, enhance energy efficiency and security and safeguarding the management of natural resources and the environment.
- 7.3 The Minister of Industrialisation and Trade may determine other aspects to underpin Public Interest by developing a Charter or Guideline on 'Public Interest' for the national competition regime.

8: INSTITUTIONAL ARRANGEMENT FOR POLICY IMPLEMENTATION

- 8.1 Institutional arrangements for the formulation, review, and monitoring of the implementation of the Competition Policy and its related legislation will remain the responsibility of the Ministry of Industrialisation and Trade whilst the Namibian Competition Commission will be responsible for the implementation of this Policy and enforcement of the Competition Act.
- 8.2 The Ministry of Industrialisation and Trade may appoint a National Competition Policy Committee consisting of multiple stakeholders to advise and assist the Ministry in advocating and percolating the NCP agenda across various sectors. The Namibian Competition Commission shall perform the secretariat functions of such a Committee.
- 8.3 Where applicable, other Agencies of the Ministry of Industrialization and Trade will also be responsible for the implementation of this Policy.
- 8.4 For the National Competition Policy to succeed, the MIT will:
 - a) Continue to support and strengthen the Namibian Competition Commission;

- b) Ensure compliance and enforcement of the rules of fair play; and
 - c) Maintain an effective and equitable balance between the interests of business and those of the public.
- 8.5 As part of its responsibility to implement the National Competition Policy and its related legislation, the Competition Commission will have powers to enforce the Competition Act and presiding over disputes where applicable. Parties aggrieved by the decision of the Competition Authority will have the right to appeal through alternative recourse mechanisms to be embedded within the Act.

9. MONITORING AND EVALUATION

- 9.1 There will be a review of National Competition Policy every five years from the date of its notification by the Ministry of Industrialization and Trade. The review should be done by an external entity and the report should be submitted to the MIT and discussed with the National Competition Policy Committee.
- 9.2 The Competition Commission will report annually on the set implementation activities set within this policy to the Ministry of Industrialization and Trade.
- 9.3 The Competition Commission will conduct, through external review and on a bi-annual basis, impact assessments of its interventions in order to measure the effectiveness, costs and benefits to society thereto.

10. ACTION PLANS (IMPLEMENTATION FRAMEWORK)

- 10.1 To reflect the key initiatives and principles identified in the policy, a series of action plans have been developed in thematic areas. These are outline in Table 1 below. These action plans are to summarise the implementation programme for the period from the adoption of the NCP. The Action Plans identify the following:
- The key initiative and follow up actions required;
 - The stakeholders with responsibility for implementation; and
 - The time frame for the implementation.
- 10.2 These plans will have to be revised annually by the MIT and with the support of the NaCC to reflect progress in implementation as well as new priorities.



National Competition Policy 2020

Table 1: Key Actions and Priorities

Key theme	Key Action Item/s	Key Responsible Agencies	Timeframe
Policy Development	Finalise and Adopt the National Competition Policy.	Lead Agency: MIT Supporting: NaCC.	July 2020-
Legislation Development	Review the current Competition Act and adopt a new bill with relevant provisions as per the NCP (on enforcements, merger control, market inquiries, price surveillance and access pricing).	Lead Agency: MIT Supporting: NaCC.	October 2020
Competition Impact Assessments	Conduct Competition Audit to identify policies and regulations that distort market process. Draw a framework to reform distortive legislation and regulations.	Lead Agency: NaCC Supporting: MIT.	December 2020
Competitive Neutrality	Develop a regulatory framework within which public and private enterprises, face the same set of rules; and where no contact with the state brings competitive advantage to any market.	Lead Agency: MIT & NaCC Supporting: Other government Ministries	January 2020- June 2020
State Support Measures	Develop a framework to control state support measures that could include: (i) relevant criteria for identifying support measures; (ii) application of exemption rules in specific sectors; (iii) assessment of prohibited measures and potential impact on competition; and (iv) definition of characteristics of the enforcement procedure.	Lead Agency: MIT, NaCC and Ministry of Finance.	January 2020- December 2020
Cross-border investments and transactions	Develop a framework to effectively vet cross-border investments and transactions to ensure it is in the public interest.	Lead Agency: MIT Supporting: NaCC, NTF and NIC/NIDA.	January 2020- December 2020
Public Procurement	Develop a cooperating mechanism between the NaCC and the Public Procurement Board to enhance competition in public tenders and reduce bid rigging practices.	Lead Agency: Public Procurement Board and NaCC Supporting MIT, MOF and all relevant government Bodies	October 2020- March 2021
Impact Assessments	Develop an Impact Assessment framework to evaluate the cost and benefits of the NCP's interventions.	Lead Agency: NaCC	January 2020- December 2020