

COMPLAINT FILING GUIDELINES:

ENFORCEMENT, EXEMPTIONS & CARTELS

The Namibian Competition Commission (“the Commission”) is mandated under *Chapter 3 of the Competition Act 2 of 2003* to deal with anti-competitive behaviour within the Namibian economy. The Commission has powers to investigate complaints and make determinations on business conduct found to be contravening the provisions of the Act.

These guidelines are intended to assist individuals or businesses to understand the Commission’s processes and how best to present a case when filing a complaint with the Commission. These guidelines are not binding on anyone filing a complaint. However, they should be followed to prevent delays in the handling and investigation of complaints.

The difference between information provided and a complaint

The Commission can either start an investigation having received information or a complaint from any person. In terms of competition law, a ‘*complaint*’ means a statement made to the Commission in a prescribed manner and form, that sets out facts and possible competition infringements and cause of action/s that the filing party or parties (the complainant/s) believe are sufficient to support a claim against the party or parties against whom the claim is brought (the respondent/s) that warrants a relief or entitles the complainant/s) to a remedy.

On the other hand, any person may provide information, in any manner to the Commission, about perceived anti-competitive behaviours in any manner and at any time. A person, who provides information to the Commission, may request that his/her identity be treated 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.

The Commission will assess the validity of the information and decide whether or not to initiate a complaint against an alleged perpetrator. In terms of the complaint process, the complainant is party to the investigation and should an infringement be found against the respondent/s, the complainant having suffered losses as a result of the infringement may claim damages.

Commissioners: Mr Peter Carlson (Chairperson), Ms Grace Mohamed (Vice Chairperson), Mr Linus //Garoeb, Ms Petronella Masabane and Ms Isabella Tjatjara

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Furthermore, a complaint should be made in the prescribed format and must be as detailed as possible, provided that:

- It is in respect of the matter that is within the scope of the Act;
- The complaint is done within three years from the date the infringement has ceased;
- the Commission has not initiated or has not already accepted a complaint; and
- the complaint is not frivolous.

PREFERRED COMPLAINT FORMAT

FORM 2: Complaint

A person wishing to lodge a complaint with the Commission may submit a complaint to the Commission by completing Form 2. This form is contained in the *Rules made under the Competition Act* (the “Rules”) and can also be obtained from the Commission or be downloaded from the Commission’s website, www.nacc.com.na. Form 2 makes provisions by way of blocks, among others, for the following:

- the name of person/s submitting complaint;
- the name of person/s whose conduct is the subject of the complaint;
- a concise statement of the complaint;
- the dates on which the conduct occurred;
- a statement indicating when and how you became aware of the conduct;
- any other information you consider relevant;
- is the conduct continuing? and
- relief claimed.

A complaint must indicate whether the alleged anti-competitive behaviour is continuing or not. If not, the date the behaviour has ceased must be specified. However, it should be noted that the Commission does not investigate anti-competitive behaviour three (3) years from the date it has ceased.

Form 1- Confidentiality Claim

Any person filing a complaint may attach any information and/or document(s) he/she thinks is relevant for the Commission’s investigation. However, should the person deem all or some of the information accompanying the complaint as confidential, he or she should complete a Form 1 which can be obtain at the Commission’s premises or easily be downloaded from its website. A complaint 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 which deals with the right of informants to claim confidentiality or request restricted access.

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Statements and Affidavits

A complaint should be accompanied by a statement detailing the facts of the complaint highlighted in Form 2 as well as detailed information about the market the alleged anti-competitive behaviour is taking/has taken place in, products and services involved, as well as product names and descriptions. Most importantly, the Commission encourages sworn statements (affidavits) made under Oath. Affidavits are vital as they can be used in Court to capture the facts of the complaint, should the case be heard in Court. Complainants can appear before the Commission to provide statements under Oath.

EVIDENCE

Investigations into allegations of anti-competitive behaviour take time and sometimes impose significant costs to the Commission as crucial information is not always readily available. However, the burden of proof lies with the complainant. A complainant is therefore encouraged to provide as much evidence as possible to back up the complaint. Doing so will enable the Commission from the onset to focus on the concerns raised in the complaint and allow it to target its resources on the most important issues and speedily conclude its investigation.

PROCESS OF DEALING WITH COMPLAINTS

- Once a complaint is received, the Commission verifies the information provided.
- Requests the complainant to clarify identified issues, when required.
- Gathers information gathering and conduct consultations with relevant parties.
- A decision will then be made whether or not to investigate.
- When the Commission decides to conduct an investigation, it must give notice of the proposed investigation to every undertaking the conduct of which is to be investigated.
- The Commission normally restricts the scope of its investigation to the complainant's original submission. However, where the Commission uncovers indications of other anti-competitive behaviours that raise additional concerns, it can initiate its own complaint in that respect.

TIMELINES FOR DEALING WITH COMPLAINTS

There are no specified timelines for dealing with complaints. However, once the Commission has accepted a complaint and decides to conduct an investigation, it does its utmost to investigate the issues raised within a reasonable time, depending on information provided and the nature and complexity of the issues to be investigated.

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CONCLUSION

The Commission refers those who wish to file complaints to Sections 2, 3, 23, 25, 26 and 33 of the *Act*, as well as Rules 13 and 15 of the *Rules*. A complaint should be made on Form 2 and where the complainant deems certain information confidential, he/she must complete Form 1. Following these guidelines when filing a complaint, will save the Commission time and resources when dealing with complaints.

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