

Interface between Competition and Empowerment

By Mihe Gaomab II

Chief Executive Officer

The Namibian Competition Commission has been established in terms of the Competition Act (Act No. 2 of 2003). The role of the Commission is tasked with promoting competitive market in Namibia and also to cure and prevent the economic ills in Namibia.

Namibia's competition law is not only there to punish or prevent anti-competitive behaviour of business but also to stop abuse of dominance or to manage anti-competitive mergers.

The role of the Competition Commission needs however to consider public interests issues and one of them is on a special requirement of its economy, which are the protection and promotion of small undertakings as well as promoting a greater spread of ownership of historically advantaged persons. The purpose of the Act speaks to Broad-based Economic Empowerment or BBEE hence there is an element of BEE or NEEEF in Namibia which is now called the *New Equitable Economic Empowerment Framework* in Namibia.

The purpose is clear for the Competition Act to take into account such a provision on promoting greater spread of more people, particularly the previously disadvantaged. But the level of instrumentation to make that happen within the Act is missing. The Competition Act cannot do this. It would be significant if the NEEEF, as a framework, is transformed into Law to ensure legal provisions to make empowerment a reality in Namibia.

Ideally, the Commission should have had a legally empowerment provision for the empowerment and local participation of Namibians on businesses which are especially merging. The essence of decisions that NaCC is empowered to make should therefore be analyzed, investigated and adjudicated upon taking into account that there is an evolving need for empowerment transformation in Namibia to ensure not only empowering the previously disadvantaged but the broader spectrum of Namibians towards increased localization and involvement of Namibians of businesses, especially those who are of a high shareholding foreign content. But because of the legal vacuum in the Competition Act and the fact that the Act consider the issue as secondary and not primary concern for the Competition Act it is a welcoming initiative by the Office of the Prime Minister on NEEEF to

make it a law, which only add to the voice to effect empowerment transformation in Namibia.

It is also particularly encouraging that the new Investment Bill once it becomes law in Namibia as spearheaded by the Ministry of Industrialisation, Trade and SME Development can actually ensure provisions on local participation thereby safeguarding or growing local domestic investment in Namibia.

Such complementary laws such as the competition law and the investment bill can specifically aimed at supporting an empowerment legislation where it can play a strong role to effect economic redress or better yet transformation for involving more people into the mainstreaming of the economy through businesses, particularly the SMEs.

The Commission embraces the promulgation of the empowerment law but with cautious optimism. Namibia as an economy towards the visionary path of 2030 can only grow if there is emphasis on the importance of empowerment in this country. Before 1990, which is the year of independence, Namibia had low or negative economic growth, protracted and skewed economic development and high levels of unsustainable debt brought about by sanctions and an economic policy that promoted economic exclusion in favour of the minority and to the detriment of the majority of people.

The present day of Government since independence realized that it faces developmental challenges based on an economy which was dualistic with high unemployment and an economic structure which is enclaved and concentrated around few sectors. The developmental challenges which are to reduce poverty, create employment, reduce inequalities across individuals and regions thereby ensuring balanced economic growth became a prime driver of focus for the post independence government.

One particular development challenges was that there was evidence of vast racial and gender inequalities in the distribution of economic opportunities and access to wealth, income, assets, capital, skills, and employment in Namibia.

The historical context of Namibia dictated a protracted period of economic exclusion favouring infrastructure capital (ports, dams, road, equipment, buildings) rather than human capital (people).

As a result, Namibia does have one of the best infrastructure in Southern Africa (roads, rail, ports, power, etc) and seemed to integrate with ease regionally and globally upon the era of political transformation in 1990. An argument can be given that the current maintenance culture of such infrastructure can be termed an "*apartheid dividend*" in terms of capital accumulation due to its exclusionist apartheid policy before 1990.

Such "*apartheid dividend*" however could not have been applicable in terms of human resource accumulation for all Namibians of ensuring that more people are integrated within and across the mainstream of the economy.

Namibia as a collective then lose out as the economy performed below its long run economic potential thus robbing Namibians of future growth dividends and higher economic growth rates. Namibia still suffers from that malaise as the economy is only growing at 4 percent which is below the 7 percent envisaged for meaningful transformation.

The structure of the Namibian economy has also not re-orient or transform to cater for an absorption capacity to ensure all Namibians participate as a majority to the economic cake of Namibia. Currently there are still remnants of skewedness in terms of resource endowments, entitlement, access to capital, positions and assets.

The result is such unequal income and severe economic exclusion hindered economic development as the economic structure was geared to serve the few and oppress the majority of the population. There is need as a Nation to address it as the pervasive situation is not helpful for Namibians or for the next generation to prosper fully in future. There is need to aim for Economic Inclusion that should ensure broad based empowerment mechanisms for all the people in Namibia.

Of course, there is need to ensure proper working process to achieve this and it is contain in NEEEF as it aims to promote broad based transformation in business through five empowerment pillars of 25 percent each: (a) Ownership (b) Management Control and

Employment Equity, (b) Human resource and Skills Development, (d) Entrepreneurship Development of the small business and through preferential procurement initiatives (f) and Community Investment in social related programmes and development initiatives.

It should be acknowledged that the premise of NEEEF is based on the fact to ensure this to be done in a targeted fashion and to ensure more people are empowered. It is by historical necessity that NEEEF need to target the previously disadvantaged. But that does not mean to take the resources from the previously advantaged. In fact, It is by economic design that all Namibians are involved in the process of making NEEEF a reality that by bringing the previously advantaged with the previously disadvantaged towards the growth and enlargement of the economic cake. NEEEF as law aims to put in place an institutional architecture where a BEE Commission is to be established to drive the process on empowerment.

NEEEF is equitable, balanced and broad based and translates to financing mechanisms which not only will it contribute to the deepening of the economic and financing system, but can shoulder transformation deals and compliance through vigorous economic transformation where the private sector takes the lead. Since NEEEF is private sector oriented, it should also be seen as an important instrument for competitiveness.

Both NEEEF and Competitiveness recognizes a market economy and a vibrant business sector which is an essential cornerstone for economic transformation.

Competitiveness deals with the manifestation of the economy of policies, institutions and factors that spurs growth of the private sector whilst NEEEF deals with economic transformation through business development to increased productivity and sustained national and human development.

NEEEF deals with the policies necessary to empower human capital on an equitable basis the private sector and businesses in Namibia. Hence NEEEF can serve as an anchored and viable tool for enhanced human capital transformation in Namibia through deliberate and consultative intervention by involving the majority of the population into the mainstream of the Namibian economy.