



ANNUAL REPORT

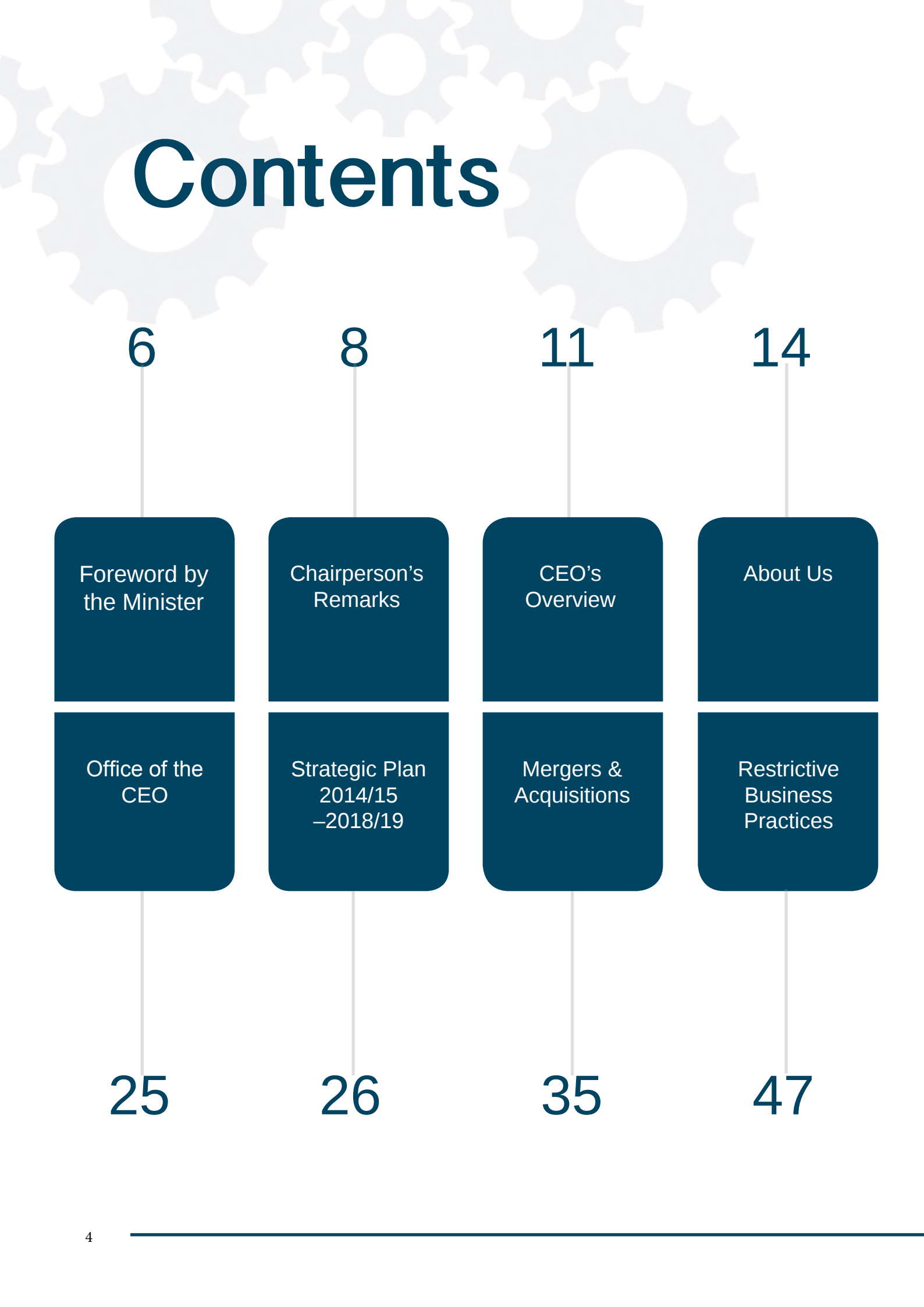
2014



Namibian
Competition
Commission



COMPETITION LAW AND THE DEVELOPMENT OF SMES



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Foreword by the Minister

It is my profound welcoming observation that the Competition Policy came of age during the year under review. Since 1996, that is, for the past 20 years, the Ministry of Trade and Industry, as it was then known, has been working with experts and stakeholders to develop a legal instrument on competition policy and law in Namibia, taking into account its developmental challenges.

The Competition Act was promulgated as Act No. 2 of 2003 and operationalised in 2008; its implementation through its institutional functioning occurred in 2009. The five years of administration of the Act, i.e. from 2009 to 2014, therefore stemmed from a policy base effected by the Ministry. The primary object of the Ministry was to apply competition law in Namibia in order to contribute towards the developmental orientation of our economy, as enshrined in Namibia's National Development Plans and its long-term Vision 2030.

For the Ministry to provide oversight and guidance, our objective is not only to ensure the functioning of the Namibian Competition Commission, but also, principally, to achieve a more effective, adaptive, developmental and robust economy, cognisant of the public interests on consumer welfare, employment, small business development and empowerment, as defined in the purpose of the Competition Act and with respect to the structure and behaviour of Namibia's corporate environment.

The Ministry believes that (SME) Development and fair competition are mutually supporting rather than contradictory objectives if policies are properly aligned towards economic development. Thus, the Act's implementation is best seen as supporting both the macroeconomic strategy in respect of national economic man-

agement and microeconomic restructuring that promotes efficiency in firms and industries. This support requires consistency across the various fields associated with competition policy, particularly trade, small- and medium-sized enterprise (SME) and industrial arenas.

It is noteworthy to appreciate the developments on the review of the Competition Act. A Bill has already been prepared. The Commission's initiation of a review of the law, based on its experience in applying the Act to date, will provide it with significant opportunities to strengthen its powers and functions as the Ministry Industrialization, Trade and SME Development seeks to enhance the prevailing competition policy regime to assist further the protection of SMEs. Furthermore, the reformed Competition Act is intended to provide greater clarity on matters of legal uncertainty.

I encourage the Commission to continue strengthening its advocacy to educate the public about the benefits and costs of a competition regime particularly as it relates to SME development.

We are cognizant that deterring anti-competitive behaviour and promoting its positive counterparts on promoting SMEs have budgetary implications which we are keen to support as the line Ministry.

In conclusion, for the next strategic five-year horizon, the Commission should invest more time and resources in dealing with anti-competitive practices such as price-fixing, excessive pricing, market dominance, exclusive agreements and exemption applications.

With the reviewed Act, the Ministry aims to support the Commission in making it a stronger, more cohesive and more effective institution, and to gain ground on market intelligence. This will enable the Commission to analyse and understand the products, firms and sectors better, and in so doing, enhance enforcement of the prevailing law to protect the SMEs as provided for in the Act.

I trust that the Commissioners, Management and Staff will manage the Commission in a professional and diligent manner in order to contribute to the fight against poverty in Namibia.



Hon. Immanuel Ngatjizeko, MP.
Minister of Industrialization, Trade
and SME Development



Chairperson's Remarks



As an incoming Chairperson of the Namibian Competition Commission, I wish to start my review of the previous year by extending my gratitude to my predecessor Mr Festus Hangu-la and the outgoing Commissioners. Significant achievements were made under their leadership and we hope to leverage the foundation that they have built to ensure that the Commission continues to grow as a strong regulatory agency. The Commission has come a long way since it started operations in 2009. Looking back over these first five years, the Commission has undoubtedly made an impact on the Namibian competition space and as a result delivered a valuable contribution to the development of the Namibian economy.

Under the skilled leadership of my predecessors, the Commission has been established as a credible and professional regulator that has proven its merit in various high-profile competition cases and mergers, while also contributing significantly to the discourse on competition and economic development in our country.

To balance the interests of shareholders with those of the economy, and indeed the Namibian society at large, is not an easy task and one that the Commission has acquitted itself of with flying colours. The Commission has endeavoured to and succeeded in establishing a level playing field, safeguarding a myriad of often conflicted interests.

This was done to ensure that we moved towards becoming a key source of knowledge on how the real economy works in terms of strategies and behaviour of companies and their implications for the economy itself.

The Commission acknowledges the new ground broken by the former Board of Commissioners through the Retail Sector study which saw Government adopting some of our recommendations as part of the National Retail Charter. In addition, we launched the National Competition Policy which is an instrument which will go a long way towards ensuring that additional

policy measures and frameworks are in place to promote and support competition aligned market outcomes.

Moreover, following an assessment of over 400 mergers and acquisitions that the Commission has been involved in to date, further recommendations were made such as the need for capital development for local investors and economic incentives for priority sectors.

The Commission's influence extended to involvement in activities of regional and international bodies such as International Cartel Network (ICN), Organization of Economic Co-operation and Development (OECD), workshops and several other conferences. The Commission is especially an active contributor to the Southern Africa Development Community (SADC) competition law training and development and has contributed case law to the SADC repository.

This mandate of increased influence in national policy formulation, synergising of ideas and cooperation with international entities is set to continue even as I undertake my new tenure as Chairperson of the Namibian Competition Commission.

I hail the achievements made by the former Board of Commissioners, which covered the formative years during which the Commission was set up, processes clarified and a solid reputation built.

Their objectives were critical to creating an environment in which the work of the Commission could flourish. This period also saw the establishment of the Commission's core business directorates, namely the Restrictive Business Practices, Mergers and Acquisitions and Research units, supported by the Office of the CEO and the Corporate Services directorates among many other notable achievements.

We are cognisant of these achievements and have subsequently formulated new goals.

We are looking forward to implementing our second Strategic Plan covering the period of 2014-2019, which was launched during the period under review to set out the milestones that need to be reached to expand and solidify the Commission's influence.

In this next phase of our existence the Commission will seek to:

- Ensure effective enforcement of the Competition Act as a contribution to creating competitive markets in line with Vision 2030;
- Expand the scope of competition regulation and strengthen the quality thereof;
- Enhance competition advocacy towards the fulfillment of sound competition principles and practices;
- Conduct action-oriented research on competition in support of evidence-based competition regulation and policy;
- Develop the Commission as a centre of operational excellence in competition regulation.

As my office commences, I do highlight the need for the new Commissioners to ensure that the trust that Government has bestowed upon us is maintained at all times during our term of office. Knowing the team (the Commissioners) as I do, I am confident it will be achieved!

It is on the premise of the former Commissioners' resolute dedication, administration and the implementation of various strategies and policies, that we set the objectives for the next five years.

The Commission further reassures management and staff of its commitment towards the institution in spite of existing challenges such as budgetary constraints, the current office space and staff remuneration, retention and attraction as some of the notable concerns.

The vision for my tenure is largely inspired by expectations of the former Honourable Minister of Trade and Industry, Hon. Calle Schlettwein

who in his letters of appointment expressed his anticipation for my diligent service and commitment to the Commission and the people of Namibia.

I remain resolute and confident that the incoming Board and current management will be able to successfully expand on the foundation built over the last five years in ensuring that the Commission continues to grow as a strong regulatory and enforcement agency. There is a vision and optimism that the Commission will continue to play a pivotal role in achieving Government's objectives towards the realization of the NDP 4 and Vision 2030.

My sincere appreciation and gratitude also goes to the CEO, management and staff of the Namibian Competition Commission whose collective efforts ensure the continued fulfilment of our mandate.



Sakeus Akweenda (Dr.)
Chairperson
Namibian Competition Commission

CEO's Overview



It gives me great pleasure to address our valued stakeholders through this 2013/2014 Annual report. Transparency and accountability are two sides of the same coin and the Commission seeks to promote them in various ways. The completion of this annual report, our financial prudence and the publication of external merger guidelines is testament to our philosophy. We have appointed an external auditor to assist with the development of our risk framework, risk management and compliance with best practices in corporate governance, such as board charter and performance agreements for our board members.

Indeed, the year 2013/2014 has been an eventful year for the NaCC as it was successfully peer reviewed by the United Nations Conference on Trade and Development, it adjudicated over several matters of public interest and reviewed and approved a significant amount of mergers and acquisitions that has the potential to change the structure of the Namibian economy.

I have been appointed for a second term as the Secretary to the Commission and with profound appreciation that I accept this challenging task, that not only will define the next five years of the Commission, but will see the Commission implementing its second five year strategy, and alignment of its resources to streamline processes and procedures in order to ensure timely and responsible feedback to its stakeholders.

Over the course of this year, the Commission has gained useful knowledge and experience in enforcement of the law. A number of cases have been taken to adjudication; some are now before the High Court on points *in limine*.

These proceedings have prevented hearing of substantive matter in key case. The Commission will have to reconstitute its investigation and prosecution strategies to produce the greater good for the greatest number. A large part of the challenges faced by the Commis-

sion relate to the Law. The Commission has finalised revision of the law to enable it to better execute its mandate.

It is our strategic vision to increase our advocacy efforts. During the reporting period the Commission embarked on various empirical market studies to identify bottlenecks to competition from policy, legal, regulatory or business conduct perspectives. One such study is that of the automotive industry. The recommendations of this study will be shared with our stakeholders at dissemination workshop during the course of the reporting year.

We have defined the next five years as a new era that will see us enhancing our efforts in enforcement, proactively prioritising sectors and cases, decreasing turnaround time of cases and increasing prosecution and enforcement of the law. This requires the Commission to streamline its processes and structure to support effective enforcement. This will enable the Commission to set research targets with an aim of contributing to the transformation of the Namibian economic landscape in line with the mandate contained in the Act.

Two other important areas of focus will be in advocacy and compliance, in that the Commission need to enhance knowledge of competition and promoting voluntary compliance. One of the most important lessons so far is the need for effective enforcement if improved compliance is to be achieved. In addition, capacity building is a continuous priority with the , regular engagement on international conferences, workshops and postgraduate training for senior staff in competition law and management remains a continuous priority for the Secretariat .

In the new strategic period, training is enhanced toward creating focused specialists in areas of enforcement, sectors and project planning and management, case management and advocacy. In addition, the Commission prioritises engagement with tertiary institutions in Namibia and the development of its graduate trainee

programme to create a critical mass of skills in competition law.

I would like to thank all staff and our stakeholders for continually supporting the Commission in achieving its goals towards fair competition for prosperous economy. I would also like to thank the Board of Commissioners and the management of the Commission for their commitment and passion to enforce the Act. We thank the Ministry of Industrialization, Trade and SME Development for their support and collaboration over the past years and pledge our commitment to achievement of Vision 2030 towards poverty eradication.



Heinrich Mihe Gaomab II
Chief Executive Officer and Secretary
to the Namibian Competition Commission

About Us

MISSION

To safeguard and promote competition in the Namibian market

VISION

Fair market competition

VALUES

National economic interests come first
Our priority and commitment is to put national economic interests towards attainment of Vision 2030 ahead of any other considerations.

At any given moment the interplay of various interests has an influence over the processes and decisions of the Commission. It is important, therefore, to ensure that the decisions taken by the Commission in regulating competition are in line with the interests expressed in Vision 2030. It is particularly important to ensure that personal interests do not have any influence on the Commission's decision-making. This is especially relevant in view of the risk of regulatory capture and the potential for forum shopping.

Impartiality

We shall be fair and equitable in living our purpose and shall uphold principles of impartiality and confidentiality regardless of the circumstances.

For the Commission to uphold the principles of impartiality, regardless of circumstances,

entails that the decisions it makes are characterised by an absence of bias, whether perceived or real. The Commission's impartiality reflects its independence in its actions and in the execution of its mandate.

Consistency

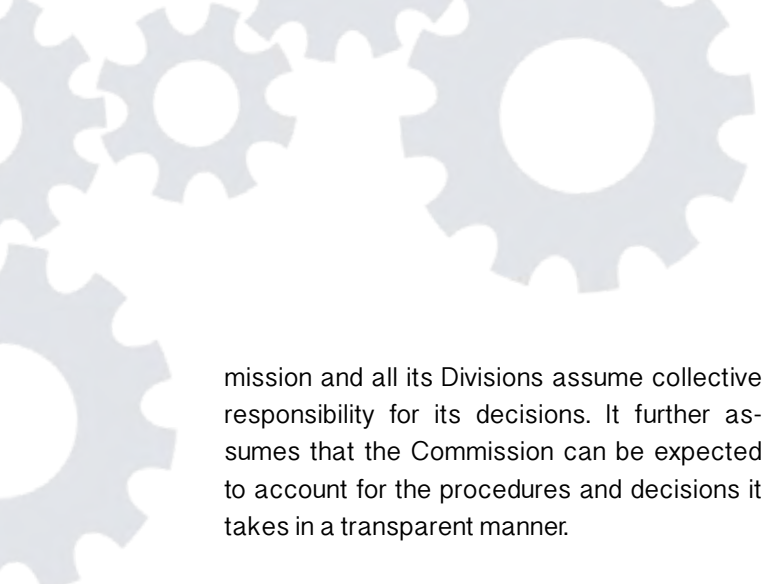
We are consistent in our approach in every instance, regardless of the circumstances and pressure that may be brought to bear.

Consistency should be evident in the way the Commission applies the law in its decision-making, unless there is a need for deviation based on changing circumstances.

Accountability for our role

We accept our responsibilities and are accountable for all our decisions and actions. We uphold and respect decisions taken by the Commission, whether an individual was party to an agreement or not.

The Commission takes ownership of all its actions and decisions. This means that the Com-

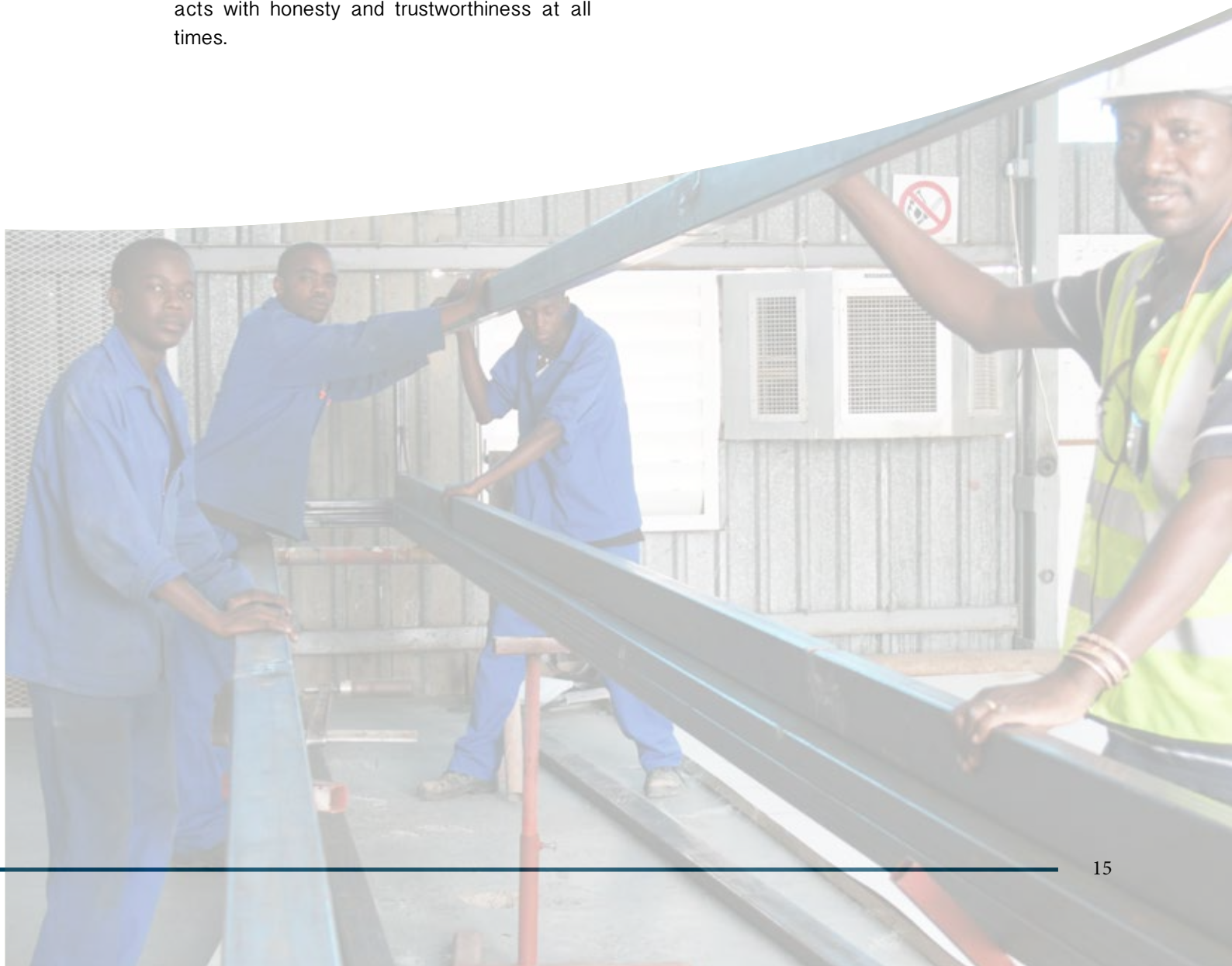


mission and all its Divisions assume collective responsibility for its decisions. It further assumes that the Commission can be expected to account for the procedures and decisions it takes in a transparent manner.

Integrity

We act with integrity in matters of substance and procedure insofar as executing the mandate of the Commission is concerned.

The Commission and its staff adhere to the expected standards of behaviour set out in its Code of Conduct in relation to its stakeholders and among members of staff. The Commission acts with honesty and trustworthiness at all times.



Board Structure

Dr. Sakeus Akweenda
Board Chairperson

Mr. Nghidinua Daniel
Member

Ms. Malverene Theron
Member

Ms. Teresia Kaulihowa
Member

Mr. Mihe Gaomab II
Chief Executive Officer and
Secretary to the Commission
ex officio Member

Mr. Gideon Shilongo
Member



Ms. Nelago Kasuto
Member
(19 Dec 2011- 18 Dec 2014)

FORMER BOARD MEMBERS



Mr Festus Hangula
Board Chairperson
(19 Dec 2011- 18 Dec 2014)

Dr. Omu Matundu-Kakujaha
Member
(19 Dec 2011- 18 Dec 2014)

Corporate Governance

“ If management is about running the business, governance is about seeing that it is run properly. ”

Robert Tricker

Corporate governance has to do with the way in which organisations are directed and controlled. It defines the distribution of rights and obligations amongst the different participants and stakeholders in the organisation, determines the rules and procedures for making decisions on corporate affairs, including the process through which the organisation's objectives are set, and provides the means to attain those objectives and monitor performance while doing so. Corporate governance further defines where accountability and authority lie within the organisation.

Good corporate governance is the foundation for the Commission to realise its vision of Fair market competition. The Commission recognises that good corporate governance is essential in creating public trust and confidence in its dealings, and enhancing its reputation.

Our governance philosophy is based not only on the Competition Act and its Rules, but also on the State-owned Enterprise Governance Act, 2006 (No. 2 of 2006), the King III Code of Corporate Governance of 2009, the Board Charter, the terms of reference of Board Committees, and various corporate governance policies collectively constituting the corporate governance framework at the Commission.

CODE OF ETHICS

The Commission has adopted a Code of Ethics to which all employees have access. We are committed to high ethical standards in all dealings with our stakeholders. The Commission expects the utmost integrity from its Commissioners, management and employees, and obliges them to conduct business honestly and without fear or favour.

SECRETARIAL AND GOVERNANCE ADVICE

The Commission has established a Corporate Governance Secretariat under the Office of the CEO. This unit is entrusted with the governance and legal function, and acts as a source of advice on governance and ethical practices within the Commission. Amongst other things, the unit is responsible for the induction and ongoing training of the Board of Commissioners in order to ensure that they understand their responsibilities and have all the necessary information they need to make well-informed decisions.

RISK MANAGEMENT AND INTERNAL CONTROLS

The Board of Commissioners has overall responsibility for the governance of risk and of systems of internal control, and is accountable for reviewing their effectiveness. In this respect, the Board has outsourced internal audit services to the auditing firm Deloitte. Internal control systems aim at managing risks within an organisation rather than totally eliminating the potential for it to achieve its objectives. Inevitably, the Board can provide only reasonable and not absolute assurance that the business of the Commission is conducted well from a risk perspective.

STRUCTURES OF DECISION-MAKING

Board of Commissioners

The Commission is headed by a Board of Commissioners. In accordance with section 5 of the Competition Act, the Board comprises a Chairperson and four members with skills expertise in industry, commerce, economics, law, accountancy, public administration and consumer affairs. The Board is responsible for the strategic direction and control of the Commission and for ensuring that decisions and actions taken are in the best interest of the Commission and its stakeholders. The Board is further responsible for the administration and enforcement of the Competition Act.

The Commission's decision-making structures are as presented in Figure 1.

Figure 1: Organogram of decision-making structures

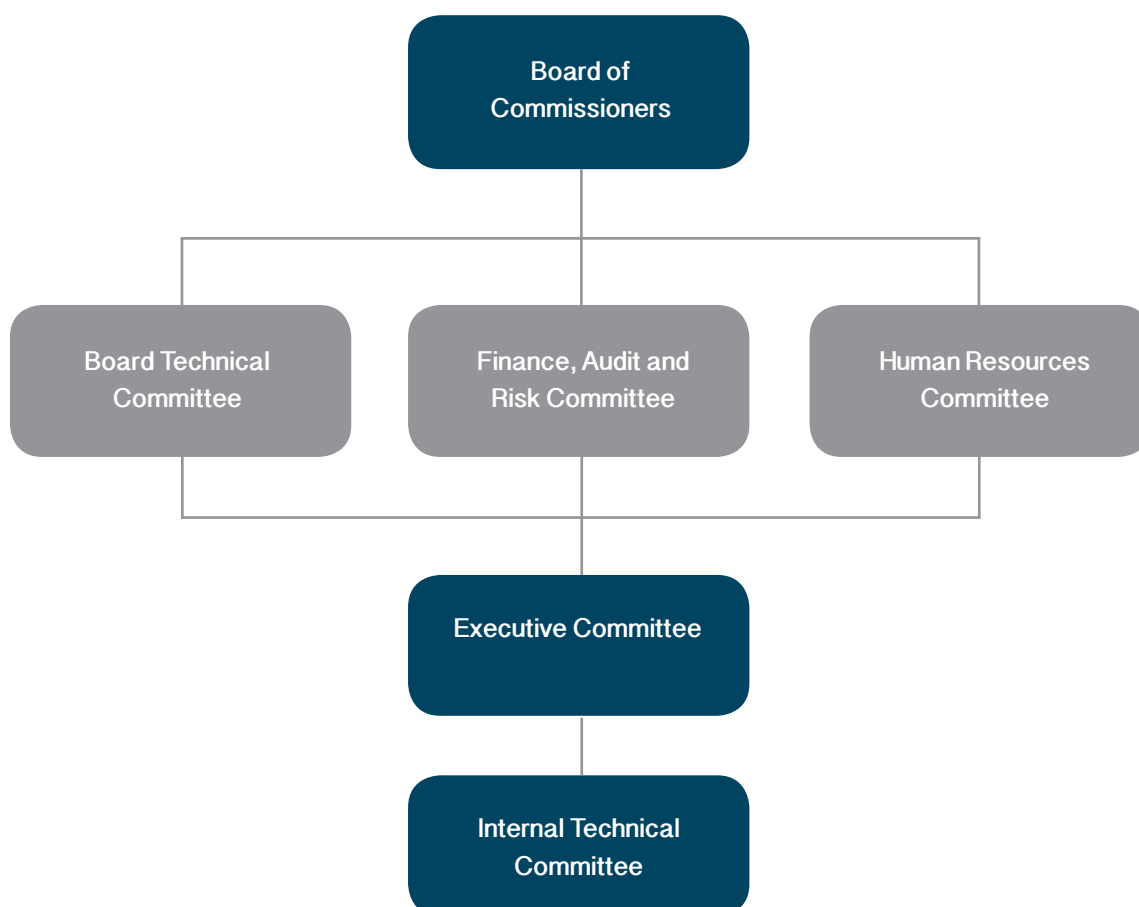


Table 1 shows the attendance at Board meetings during the reporting year, while Table 2 reflects remuneration to Board Members, where applicable.

Table 1: Board meetings held during the period under review

Name	Term ending	Designation	Meeting dates		
			22 July 2013	4 October 2013	5 December 2013
Nghidinua Daniel	16 February 2016	Member	x	✓	x
Festus Hangula	14 December 2014**	Chairperson	✓	✓	✓
Omu M Kakujaha	14 December 2014**	Member	✓	✓	✓
Nelago Kasuto	14 December 2014**	Member	✓	✓	✓
Malverene Theron*	16 September 2016	Member	n/a	✓	✓

* Commissioner Malverene Theron was only appointed to the Board in September 2013.

** These three Commissioners were replaced with the recent appointments of Adv. Sakeus Akweenda (Chairperson), Mr Gideon Shilongo and Ms Teresa Kaulihowa in February 2015.

Table 2: Board remuneration*

Name	Designation	Meeting dates and fees (N\$)			
		22 July 2013	4 October 2013	5 December 2013	Retainer fees
Nghidinua Daniel	Member	n/a	n/a	n/a	n/a
Festus Hangula	Chairperson	7,296.50	7,296.50	7,296.50	51,790.00
Omu M Kakujaha	Member	4,602.25	4,602.25	4,602.25	42,306.00
Nelago Kasuto	Member	4,602.25	4,602.25	4,602.25	42,306.00
Malverene Theron*	Member	n/a	4,602.25	4,602.25	31,729.50

* All fees are paid in accordance with the State-owned Enterprises Governance Council Remuneration Directives of 12 August 2010.

** Commissioner Malverene Theron was only appointed to the Board in September 2013.

Board Committees

The Commission has established three Board Committees in accordance with section 12 of the Competition Act. These Committees, which consist only of Commissioners, are vested with specific powers. They are established to carry out specific tasks and make recommendations to the Board.

All Committee decisions are subject to Board approval. The Board may at any time vary or set aside any decision by a Committee.

The Commission currently has the following Board Committees:

Board Technical Committee

This is an advisory body acting as the first stage in the Commission's adjudication of all technical cases in respect of the Mergers and Acquisitions Division, the Restrictive Business Practices Division, and the Economics and Sector Research Division.

Finance, Audit and Risk Committee

This Board Committee has 'front-line' governance responsibilities. Besides its oversight of financial reporting, the Committee is also responsible for overseeing continuous disclosure and corporate reporting. The Committee has regard to all factors and risks that may impact on the Commission's integrity. These include –

- any factors that may predispose management to present a misleading picture
- all significant judgments and reporting decisions made, and
- any evidence that brings into question previously published information, forward-looking statements or information.

Human Resources Committee

The primary function of this Committee is to assist the Board in discharging its duty to oversee the establishment of appropriate human

resources policies and strategies that will equip the Commission with the capacity to achieve its short- and long-term business objectives.

Executive Management

The Commission's Executive Committee (ExCo) is headed by the CEO and comprises the Directors, the Corporate Secretary/Legal Advisor, and the Technical Advisor to the CEO.

The key function of the ExCo is to supervise the overall operations and strategic management of the Commission, including conditions of service, planning and policy development, accountability and reporting, public relations, and all financial and legal requirements. The ExCo's responsibility also includes active participation in monitoring the Commission's day-to-day operations.

Internal Technical Committee

This committee was established to assist the Office of the CEO in fulfilling its function of making appropriate recommendations to the Board Technical Committee and, ultimately, the Board. The Internal Technical Committee, which is headed by each of the Commission's three Technical Directors on a rotational basis, advises the CEO on matters relating to competition, regulatory and policy making activities, and any other matter requiring his/her decision and/or recommendation to the Board Technical Committee and, ultimately, the Board itself.

The Internal Technical Committee evaluates and conducts relevant interrogations regarding the technical work emanating from the Mergers and Acquisitions Division, the Restrictive Business Practices Division, and the Economics and Sector Research Division, whether exogenously or endogenously determined, and advises the CEO accordingly.

The Secretariat





Executive Committee

Mr. Gideon //Garob
Director Corporate Service

Mr. Mihe Gaomab II
Chief Executive Officer and
Secretary to the Commission

Mr. Vitalis Ndalikokule
Director Mergers
and Aquisition



Ms. Bridget Dundee
Technical Advisor:
Office of the CEO

Ms. Ashley Tjipitua
Corporate Secretary
and Legal Advisor

Office of the CEO



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and Legal Advisor

Strategic Plan 2014/15-2018/19



The Commission's fifth year of existence provided an ideal opportunity to reflect on the changing economic and regulatory environment and on our strategic positioning in response to these changes. Furthermore, it offered us a chance to reflect on the quality of the foundations that we have built over the past five years.

This situation analysis, conducted as part of the strategic planning process, confirmed that we have laid sound foundations in establishing our operations. This included instituting modern organisational policy frameworks for the effective governance and management of our organisational resources, the employment of qualified staff, and exercising our mandate to regulate mergers and acquisitions since our inception.

The analysis further revealed that there were an increasing number of cases in which the investigations of possible contraventions were nearing completion, meaning that the scope of regulation over the next five years was set to expand to include strengthening enforcement of the Competition Act. Furthermore, the initial capacity for specialist economic research and analysis has been established to support evidence-based enforcement and compliance with the Act.

The Commission's Strategic Plan and Annual Performance Plan, besides mentioning the conducting of the above mentioned situation analysis, sets out certain strategic priorities in response to the execution of our mandate in fluctuating environmental conditions, and presents the Annual Performance Plan's implementation modalities. These strategic priorities were selected after a thorough analysis of the conditions in which the Commission operates, and drew on lessons learnt over the past five years of its existence.

Based on these priorities, the following strategic goals were formulated to direct our efforts and resources in enforcing the Competition Act and promoting compliance with it:

- Ensure effective enforcement of the Act as

a contribution towards creating competitive markets, in line with Vision 2030, Namibia's long-term development plan

- Expand the scope of competition regulation and strengthen its quality
- Enhance competition advocacy in respect of adhering to sound competition principles and practices
- Conduct action-oriented research on competition in support of evidence-based competition regulation and policy, and
- Develop the Commission as a centre of operational excellence in competition regulation.

The above strategic goals evolved from, and strengthen, those set out in the previous Strategic Plan. Whilst the pre-2014 strategic goals focused on establishing and operationalising the Commission's regulatory mandate by way of conducting research, developing partnerships and building the capacity of the organisation, the 2014/15–2018/19 Strategic Plan emphasises the Commission's enforcement activities, as well as the use of advocacy and the promotion of compliance as the twin pillars of competition regulation. Furthermore, ensuring compliance with the law will be informed by research-based evidence, high-quality analysis and decision-making, and operational excellence.

OPERATIONALISING THE STRATEGIC PLAN

Our Strategic Plan should be reviewed and updated annually. This is to ensure that it remains relevant to changing conditions. The yearly review is limited, however, and fundamental changes to the Strategic Plan should only be made if changing circumstances overtake the goals, objectives and targets or make them irrelevant. The Strategic Plan also provides the framework for the Annual Performance Plan, which, in turn, provides the framework for the development of individual performance agreements against set targets and commitments in the Strategic Plan. In this way, the Strategic Plan

cascades down from the organisational level to the Divisional and individual levels.

Four crucial issues should be considered to ensure the successful implementation of the Strategic Plan. They are as follows:

- **Collective leadership and management:** Senior management are responsible for articulating the strategic goals, for inspiring and motivating staff, for providing consistent support, for removing obstacles, and for providing direction in times of uncertainty.
- **Implementation mechanisms and structures:** These need to be kept simple and whenever possible, activities need to be integrated into the day-to-day functions of the different departments.
- **A dedicated Strategic Plan implementation role within the Office of the CEO:** This is necessary to coordinate Strategic Plan implementation, monitoring and review activities, and
- **Management of change:** The implementation of the Strategic Plan entails changes in the organisation, which require careful attention.

Key points are elaborated below

CHANGE MANAGEMENT

Implementing a new strategy for the development of any organisation entails change. Change management is a systematic approach to dealing with such change at the organisational level. It involves defining and implementing the processes for dealing with change, and creating an environment that supports the changes anticipated. A number of critical success factors are needed in order to sustain positive change. The four factors applicable to the Namibian Competition Commission's revised Strategic Plan for its development are outlined below.

Critical Success Factor 1: Facilitating communication

Effective communication is crucial for staff buy-in and commitment to the changes resulting from the Strategic Plan's implementation process. Continuous communication about planned activities and likely changes need to be integrated into all existing communication channels. Where they are lacking, appropriate channels should be established specifically for this purpose. Moreover, since communication is a two-way dynamic process, staff should be offered an opportunity to provide feedback on the implementation process. It is also vital that communication activities are coordinated well.

Critical Success Factor 2: Ensuring staff participation

Staff participation across the organisation should be encouraged since it is essential to building a sense of ownership of the changes taking place. There are different ways to encourage staff participation, including requesting their participation in teams, delegating tasks, and inviting participation in meetings.

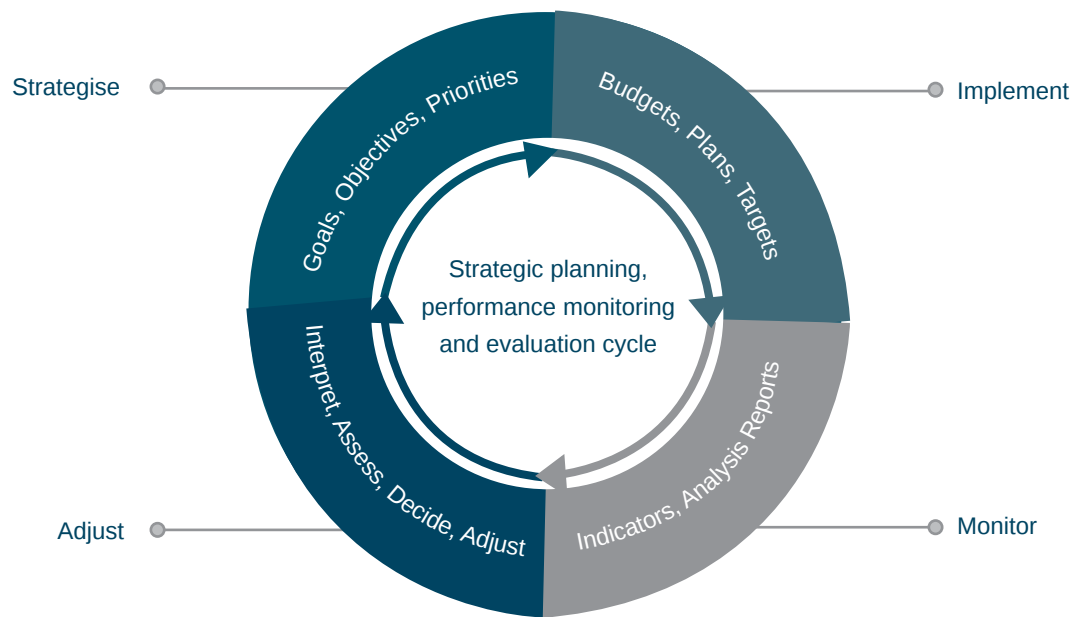
Critical Success Factor 3: Building capacity

Changes are liable to impact job functions too: staff may require additional skills, knowledge and expertise in order to perform their jobs. Such opportunities for skills development and capacity-building should be constantly monitored and the necessary measures implemented in response.

Critical Success Factor 4: Monitoring, evaluating and reporting on performance

Monitoring and evaluating our performance form part of a four-stage virtuous cycle that incorporates defining our strategy, implementing plans, monitoring the execution of those plans, and adjusting activities to achieve our strategic goals (see Figure 1). This four-stage process is informed by integrated data and indicators that gauge the effectiveness of strategies we implement in each stage of the cycle.

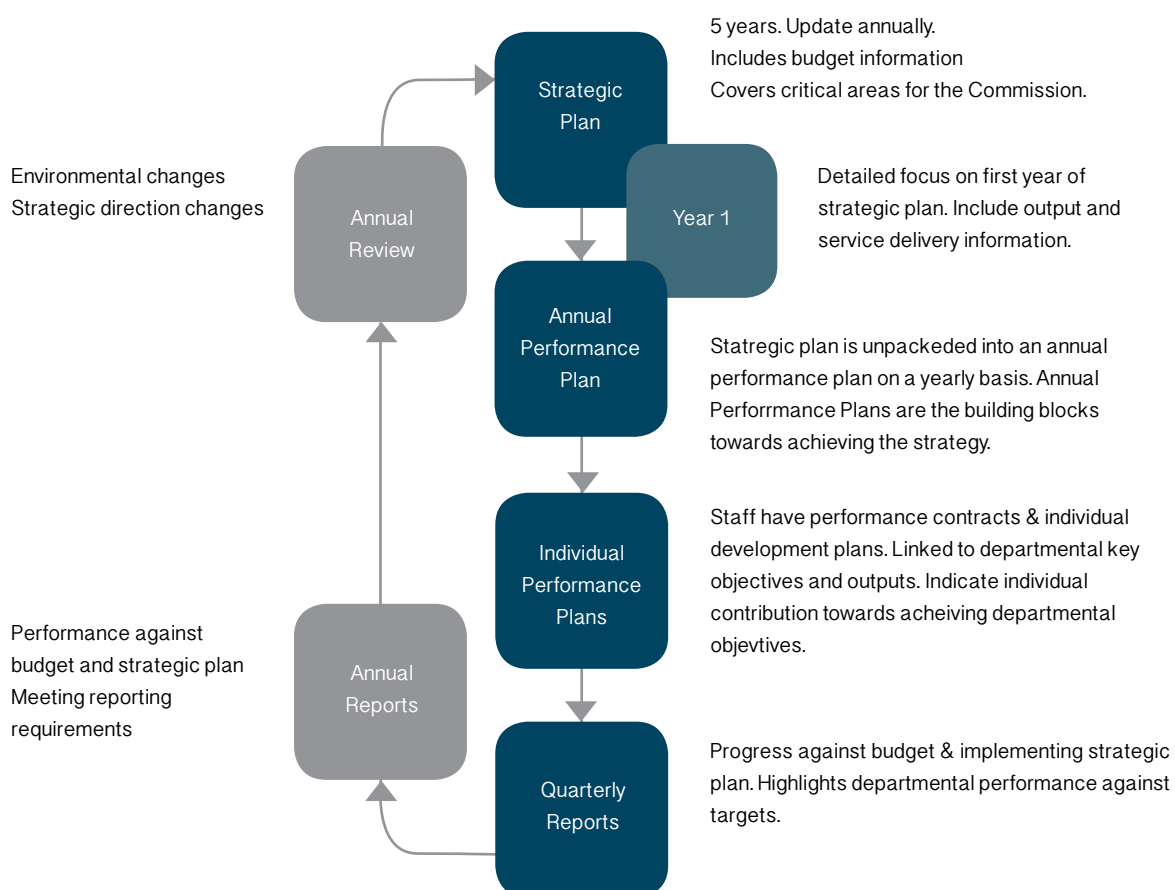
Figure 1: Strategic planning, performance monitoring and evaluation cycle



Source: Adapted from Eckerson (2009)

Reporting on our performance constitutes the third element of Critical Success Factor 4 (see Figure 3).

Figure 3: Strategic planning, performance monitoring, evaluation and reporting cycle



Monitoring is the ongoing process of measuring and assessing actual performance against plans, current performance against past performance, and performance against internal and/or external benchmarks. Evaluation refers to the systematic collection and analysis of evidence on progress against goals and outcomes, particularly with reference to the achievement of policy goals set out in the Competition Act. Analysis involves an evaluation of relevance, performance (effectiveness and efficiency), value for money, impact and sustainability. Thus, the aim of performance monitoring and evaluation is threefold:

- To ensure effective operations through collecting information that is needed not only to inform planning, but also to optimise the implementation of activities
- To ensure decision-making and accountability are supported by access to information on the performance of implementing the Strategic Plan, and
- To facilitate learning that enables the Commission and its stakeholders to reflect critically on progress.

Quarterly reports in the organisation act as an important monitoring instrument as they capture performance against the various plans on a quarterly basis. Such reports describe progress made by the various Divisions against their performance targets. These reports also provide an update on expenditure for the quarter, which should be reconciled with the budget for the quarter concerned. Such reports should also describe the challenges experienced, list the issues and highlight the risks involved.

These quarterly reports feed into reports that review progress for the year against Annual Performance Plans. Such annual reviews should also assess whether there are any significant changes in the external and internal environment, and if any of the major assumptions underpinning the Strategic Plan have changed. The annual review should provide a more detailed report that reflects on performance over

the year and incorporates a review of the targets achieved.

A mid-term review should be undertaken at the halfway mark of the Strategic Plan implementation period, e.g. about 32 to 36 months after its inception. The review is important to determine if any significant changes need to be made to the Strategic Plan.

An in-depth evaluation should be undertaken towards the end of the five-year planning cycle. The evaluation should consider the relevance, effectiveness, efficiency, impact and influence of the employed strategy on the Commission's sustainability.

STRATEGIC RISK ASSESSMENT

An assessment of the strategic risks faced by the Commission during the period under review is presented in Table 3.

Table 3: Strategic Risk Register

Risk category	Descriptive of risk	Risk impact	Probability of occurrence	Inherent risk	Current risk control effectiveness	Current residual risk	Desired control effectiveness*	Details of risk control
Funding availability	Delay with-drawel of Government funding	Catas trophic	Possible	Moderate	Fair	Minor	Good	Prioritisation of funding
Business continuity management	Business Continuity Programme Disaster Recovery Programme	Major	Possible	Significant	Good	Minor	Excellent	Service Level Agreement in place with service pro-vider Off-site back-up in place
Corporate governance	Adherence to and compli-ance with principles of effective corporate governance Policies, procedures and prac-tices Timeous information for deci-sion-making Handling of confidential information Delegation of powers	Major	Likely	Significant	Poor (confidential information, procedures in han-dling case information, documenta-tion)	Moderate	Excellent	Structures in place to make decisions Policies and procedures on corporate governance in place Effective re-cordkeeping Monitoring of compliance with decisions and proce-dures Proper handling of confidential information

Risk category	Descriptive of risk	Risk impact	Probability of occurrence	Inherent risk	Current risk control effectiveness	Current residual risk	Desired control effectiveness*	Details of risk control
Critical skills	Recruitment Remuneration Learning and development Job satisfaction Staff morale Succession planning Working environment climate	Major	Likely	Significant	Fair	Moderate	Good	Effective recruitment strategies Competitive salaries Rewarding working environment Staff development Talent management
Financial management	Approvals from executive authority Budget constraints Budget management and utilisation Fruitless and wasteful expenditure	Catastrophic	Possible	Catastrophic	Fair	Moderate	Excellent	Financial controls Financial management policies and procedures Defined signing powers
Information technology (IT) infrastructure	IT system availability Service quality Downtime System effectiveness Dependency on service provider	Catastrophic	Likely	Major	Fair	Moderate	Good	Off-site back-up in place Access Service standards

Risk category	Descriptive of risk	Risk impact	Probability of occurrence	Inherent risk	Current risk control effectiveness	Current residual risk	Desired control effectiveness*	Details of risk control
Procurement	Integrity of data in procurement process Favouritism and kick-backs in procurement	Major	Likely	Major	Good	Moderate	Excellent	Procurement policy and procedures in place Tender committee established
Reputational risk	Maintaining the reputation of the Commission	Catastrophic	Likely	Major	Fair	Major	Excellent	Internal and external communication strategy in place Engagement of stakeholders Maintenance of healthy media relations

The following table indicates the relevant degrees of comparison per category:

Risk Impact	Likelihood of occurrence	Control
Catastrophic	Almost certain	Poor
Major	Likely	Fair
Moderate	Possible	Good
Minor	Unlikely	Excellent
Insignificant	Rare	

Mergers and Acquisitions



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INTRODUCTION

The main function of the Commission's Mergers and Acquisitions Division is the enforcement of the provisions in Chapter 4 of the Competition Act.

MERGERS

The Division investigates and assesses whether a merger is likely to raise any competition or public interest concerns, and submits an investigative report and its associated recommendation to the Board of Commissioners. The Division further provides advisory opinions, monitors compliance with conditions imposed on mergers, and investigates contraventions of Chapter 4. In its assessment, the Commission considers whether a merger –

- is likely to substantially prevent or lessen competition
- may result in any party strengthening a dominant position in a market or acquiring a dominant position, and
- can or cannot be justified on the grounds of public interest.

One such ground that the Commission may consider – which is in line with the reporting year's

theme “Competition Policy and SME Protection” – is the extent to which the proposed merger would be likely to affect the ability of small undertakings, in particular undertakings owned or controlled by historically disadvantaged persons, to gain access to or be competitive in any market.

The Commission is to be notified of a proposed merger if its value is above the specified notification threshold of –

- N\$20 million for the combined annual turnover and assets of the merging undertakings in Namibia, or
- N\$10 million for the annual turnover or assets of the target undertaking in Namibia.

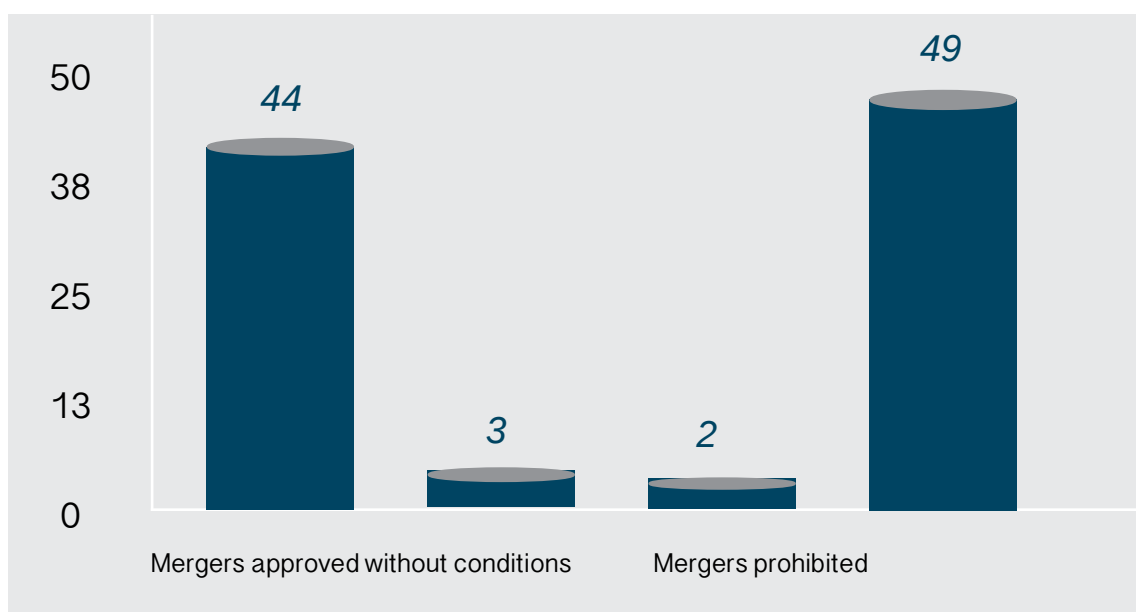
Parties to a merger that falls below these specified thresholds may also be required to notify the Commission if such a merger is likely to raise any competition or public interest concerns.

Section 47(1) of the Competition Act, read with section 47(6) therein, provides that the Commission may either grant or decline approval of the merger's implementation, or approve a merger with conditions aimed at addressing competition or public interest concerns that are likely to result from such merger.

Determinations on mergers

In the 2013/14 reporting year, the Commission investigated and adjudicated on 49 mergers. Three of these were approved with conditions, 44 were approved without conditions, and two were prohibited, as illustrated in Figure 4.

Figure 4: Merger determinations by outcome



Determinations by merger type

Mergers are classified either as horizontal or as non-horizontal. A horizontal merger is a merger between undertakings that are competitors at the same level of production or distribution. Non-horizontal mergers are comprised of vertical and conglomerate mergers. While a vertical merger occurs between two undertakings operating at different but complementary levels in the supply chain, such as a manufacturer in the upstream market and a retailer in the

downstream market, a conglomerate merger involves undertakings that trade in different product markets, without a vertical relationship.

Of the 49 mergers investigated, 26 (53%) were horizontal, 5 (10%) were vertical, 16 (33%) were conglomerate, and 2 (4%) were a combination of horizontal, vertical and conglomerate (see Table 4).

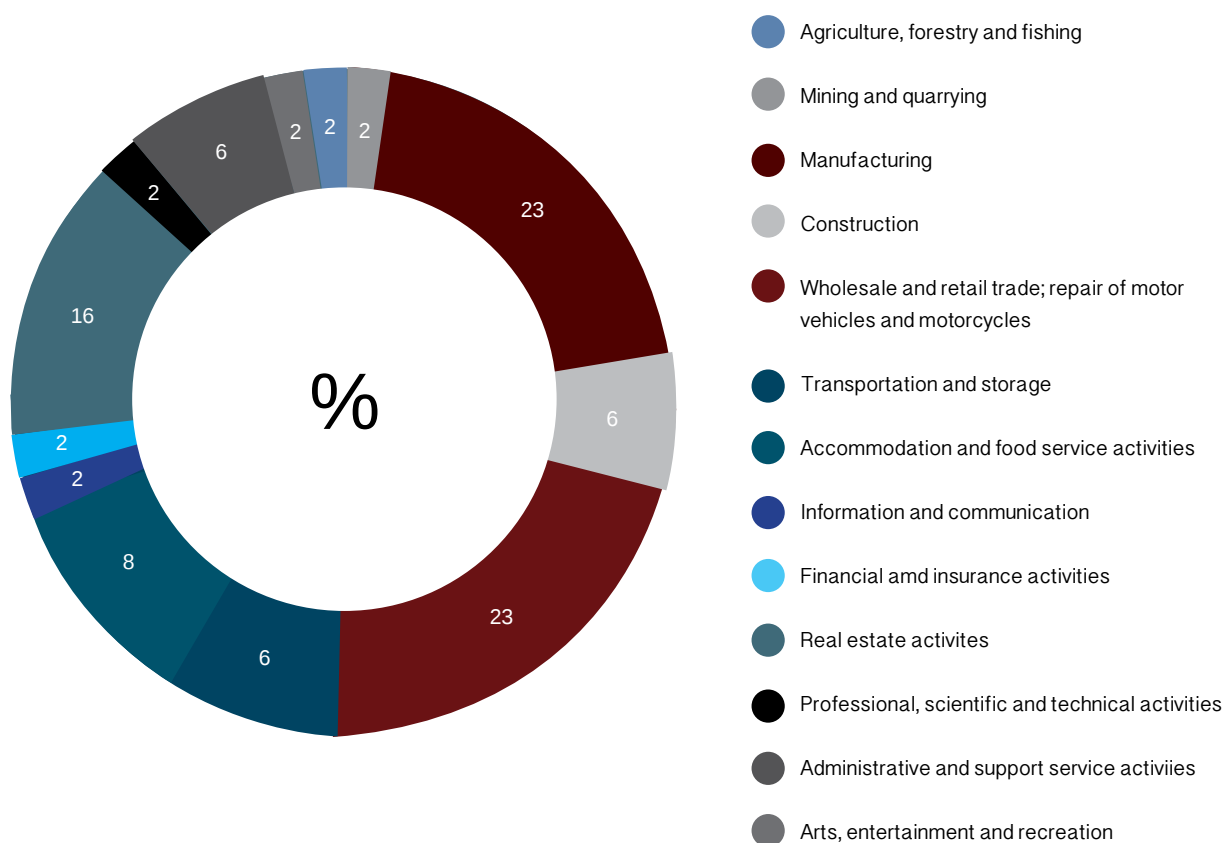
Table 4: Determinations by merger type

Merger Type	Number	Percentage
Horizontal	26	53%
Vertical	5	10%
Conglomerate	16	33%
Combination (horizontal, vertical, conglomerate)	2	4%
TOTAL	49	100%

Determinations of mergers by sector

Most of the mergers investigated by the Commission were in the manufacturing sector (23%), the wholesale and retail trade sector (23%), and the real estate sector (16%), as illustrated in Figure 5.

Figure 5: Determinations of mergers by sector

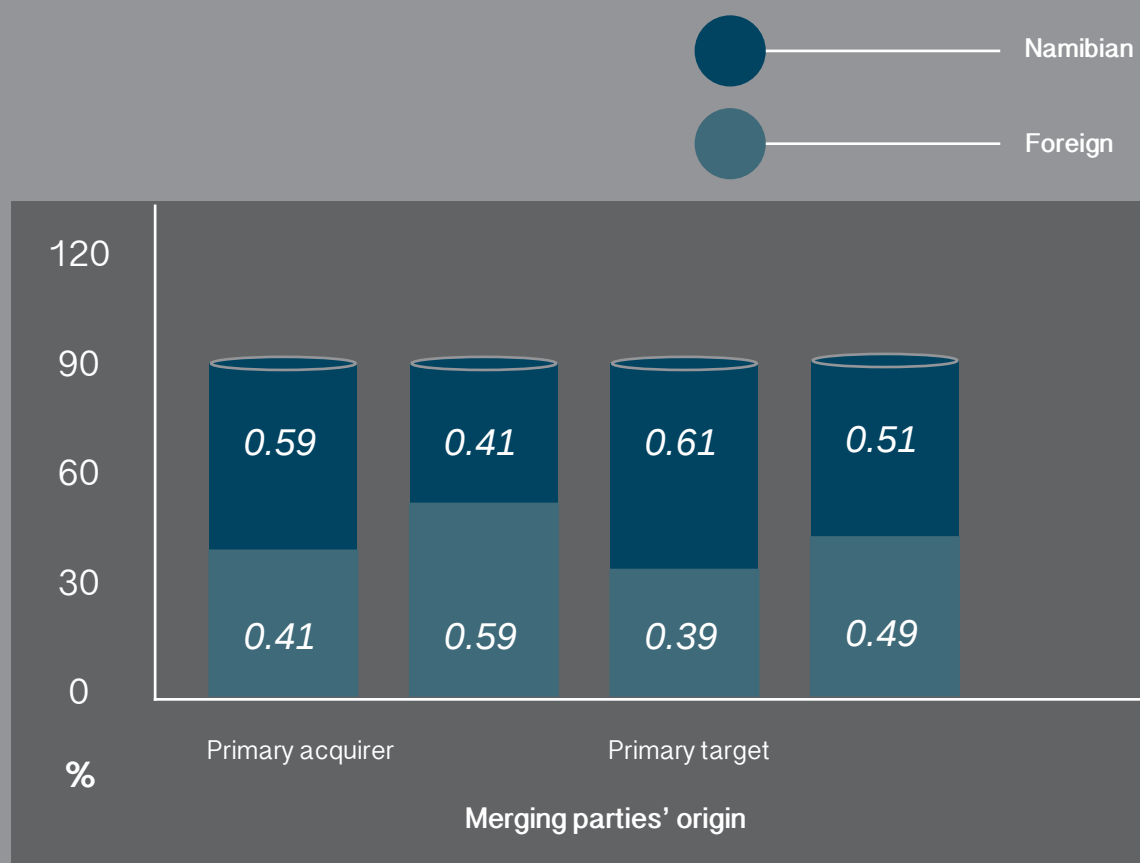


Determinations by merging parties' ownership

Section 3(1) of the Competition Act applies to all economic activities within Namibia or having an effect in Namibia. Of the 49 mergers investigated, 61% of the primary target undertakings were Namibian-registered, but only 51%

of these were owned and controlled by Namibians. Similarly, of the 59% primary acquiring undertakings registered in Namibia, only 41% were owned and controlled by Namibians. Thus, even though the majority of the primary target and primary acquiring undertakings were Namibian-registered, they were not owned or controlled by Namibians (see Figure 6).

Figure 6: Determinations by merging parties' ownership



Mergers granted conditional approval

As stated earlier, the Commission is empowered to prohibit a merger that is likely to substantially prevent or lessen competition or harm the public interest. However, it will approve a merger with conditions when a specific remedy can address the competition or public interest concern(s) raised by a proposed merger. The remedy may either be behavioural or structural. Behavioural remedies are normally ongoing remedies aimed at regulating the behaviour or future conduct of the merged undertaking, such as ensuring that it allows access to key inputs or facilities that other undertakings (competitors or customers) need to compete. Structural remedies are generally once-off remedies aimed at addressing the market structure and require some form of structural change on the part of the merged undertaking, such as selling part of its business or assets.

The three mergers approved with conditions during the period under review were subject to behavioural remedies. One of the conditions imposed aimed at addressing employment concerns while the other two aimed at protecting small undertakings. The three mergers involved were as follows:

Southern Cross Security Services (Pty) Ltd // Hams Security Services Ltd
Agra Ltd // A Rosenthal (Pty) Ltd, and
Agra Ltd // Kalahari Arms & Ammunition (Pty) t/a Safari Guns & Outfitters.

Prohibited mergers

One of the objectives of the Competition Act is to ensure that small undertakings have an equitable opportunity to participate in the Namibian economy. Thus, even if there are no major competition concerns arising from the implementation of a proposed merger, the Commission may, in terms of section 47(2) of the Competition Act, base its decision on public interest factors, such as the extent to which the proposed merger would be likely to affect small undertakings' ability to gain access to or be competitive

in any market. This is of particular interest when it comes to small undertakings owned or controlled by historically disadvantaged persons.

The two mergers prohibited by the Commission during the period under review were as follows:

- The proposed acquisition of the liquid petroleum gas (LPG) business of Puma Energy Namibia (Pty) Ltd by Namox Namibia (Pty) Ltd, and
- The proposed acquisition of shares in Guinea Fowl Investments Seventeen (Pty) Ltd by Colas South Africa (Pty) Ltd and the Roads Contractor Company Ltd.

The proposed mergers were found likely to have a negative impact on competition and on the ability of small- and/or medium-sized enterprises (SMEs) to compete in the relevant markets.

In effect, therefore, apart from the fact that the proposed mergers raised competition concerns, the Commission's decisions were also aimed at protecting small undertakings by ensuring that they are afforded an opportunity to participate in the economy by creating a level playing field for all players, large or small.

CASE STUDIES

The following case studies provide a summary of the Commission's decisions on prohibited and conditionally approved mergers

CASE 1

Merger between Namox Namibia (Pty) Ltd and the LPG business of Puma Energy Namibia (Pty) Ltd

In April 2013, the Commission received a notification on the proposed acquisition of the liquid petroleum gas (LPG) business of Puma Energy Namibia (Pty) Ltd by Namox Namibia (Pty) Ltd.

Prior to Puma's takeover of BP Namibia (Pty) Ltd, BP had an agreement with Namox in terms of which Namox was appointed as the authorised distributor of its LPG products in Namibia. After the agreement between BP and Namox was concluded, BP's acquisition by Puma Energy meant that Puma had inherited the above agreement and was expected to honour its provisions. However, unlike BP, Puma did not have a refinery in South Africa; as a result, it was unable to supply LPG to Namox – hence the decision to sell its LPG business.

The Commission found that, in the relevant product market for the distribution and supply of LPG, Afrox – the ultimate holding company of Namox – was the biggest competitor. In prohibiting the merger, therefore, the Commission determined that –

“...the combined market share of the acquiring undertaking would result in the significant increased level of concentration in the relevant market. Therefore the proposed merger is likely to substantially lessen or prevent competition in the market for the supply and distribution of liquid petroleum gas (LPG) in Namibia.

There are currently three competitors in the market for the distribution and supply of LPG in Namibia. The proposed acquirer belongs to undertakings that currently [control] a significant share of the Namibian LPG market. Given the dominance of the acquiring undertaking, the Commission concludes that the merger will result in the undertakings involved in this transaction acquiring and strengthening a dominant position in the relevant market.

The proposed merger is therefore likely to affect the ability of small undertakings, in particular small undertakings owned or controlled by historically disadvantaged persons, to gain access to or be competitive in the relevant market .”



CASE 2

Merger between Colas South Africa (Pty) Ltd, Roads Contractor Company Ltd & Guinea Fowl Investments Seventeen (Pty) Ltd

In July 2013, the Commission received a notification on the proposed acquisition of shares in a new entity, Guinea Fowl Investments Seventeen (Pty) Ltd, by Colas South Africa (Pty) Ltd and the Roads Contractor Company Ltd (RCC).

The transaction entailed both Colas South Africa and the RCC acquiring equal shareholding in Guinea Fowl Investments, which would be renamed Oryx Surfacing (Pty) Ltd, which would then entail transferring their road surfacing businesses and leasing and/or transferring their road surfacing assets to Oryx Surfacing.

As a result of its investigations, the Commission resolved to prohibit the merger. The Commission reasoned as follows:

1. *"The implementation of the proposed merger is likely to prevent competition in the upstream bituminous binders supply market, which has a direct effect on the downstream road surfacing market. Post[-]merger, Tosas Namibia [the only competitor to Colas South Africa] is likely to exit the market, which will result in a monopoly situation being created which is*

likely to result in increased prices.

2. *The proposed merger is likely to prevent and lessen competition in the downstream road surfacing market given the relationship between RCC and RA, the capacity that Oryx Surfacing will acquire and the fact that Colas Namibia is likely to supply bituminous binders more cheaply to Oryx Surfacing than its competitors.*
3. *Given that the proposed merger is likely to result in the foreclosure of Tosas Namibia ..., the Commission finds that the proposed merger is likely to restrict trade in the relevant market for the supply of bituminous products as the likely foreclosure of the only competitor will result in Colas Namibia being the only supplier of these products in the market.*
4. *The implementation of the proposed transaction is likely to result in the merged firms having the ability to exercise market power in the upstream bituminous binders supply market that has an important link with the downstream road surfacing market, which will consequently lead to foreclosure of rivals or raise their costs in a way that harms consumer welfare in the downstream road surfacing market."*



CASE 3

Merger between Agra Ltd & A Rosenthal (Pty) Ltd As well as the Merger between Agra Ltd & Kalahari Arms & Ammunition (Pty) Ltd t/a Safari Guns & Outfitters

In March 2013, the Commission received merger notifications for Agra Ltd's proposed acquisition of A Rosenthal (Pty) Ltd and Kalahari Arms & Ammunition (Pty) Ltd t/a Safari Guns & Outfitters.

Agra is the largest livestock organisation and multi-purpose agricultural company in Namibia, with branches throughout the country providing farming inputs and equipment as well as other goods and services. Through one of its divisions, Safari Den, it imports, wholesales and retails firearms, ammunition and related products as well as outdoor products. Rosenthal and Kalahari are primarily involved in the importing, wholesaling and retailing of firearms, ammunition and related products.

As there are no manufacturers of firearms and ammunition in Namibia, all these products are imported from abroad and sold to end consumers through Namibian wholesalers and retailers. There are only five dealers importing significant amounts of such products from abroad. Other players in these markets are smaller dealers situated in towns across the country, most of which do not have the capacity to import their products from abroad and primarily buy their stock from the Namibian importers.

One of the concerns was that, post-merger, the merging parties would raise their wholesale prices and/or supply their products to Agra's retail branches situated across the country at lower prices than they charge the smaller dealers, resulting in the smaller dealers being unable to compete and eventually exiting the market.

In order to address this concern, the Commission approved the proposed transactions subject to certain conditions, including that –

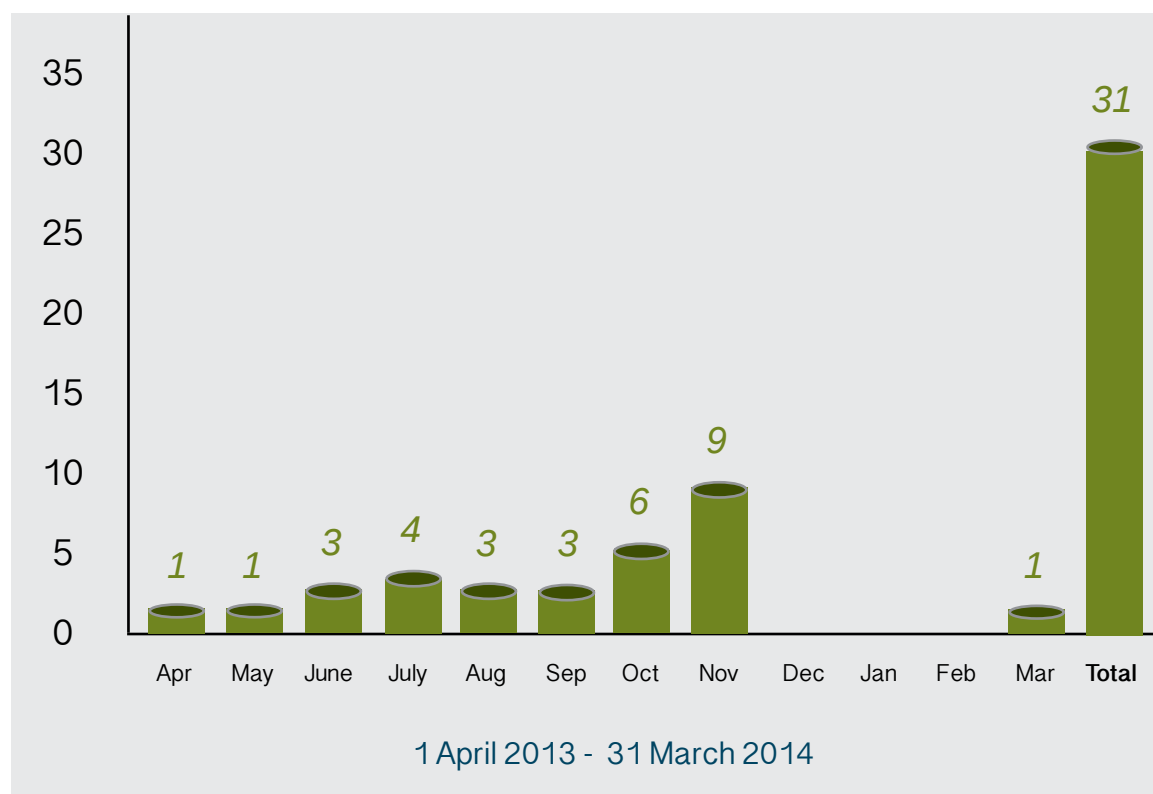
1. Agra did not acquire any other dealer or open any additional dealerships in Namibia for a period of five years
2. Agra continued to supply the smaller dealerships with products through Safari Den, Rosenthal and Kalahari on a wholesale basis, and at the same wholesale prices as it sold to Agra's retail branches, and
3. Safari Den did not supply Agra's retail branches with products sourced from Rosenthal or Kalahari.



ADVISORY OPINIONS

As depicted in Figure 7, the Commission issued 31 advisory opinions during the period under review.

Figure 7: Advisory opinions



In most cases, parties enquired whether their transactions were mergers and, hence, notifiable to the Commission. These included the following:

- Whether the parties were undertakings as defined in the Competition Act
- Whether the transaction involved the transfer of part of a business or simply assets
- Whether the transaction met the notification thresholds
- Whether the merger was an internal restructuring and, if so, whether the parties were therefore exempted from having to notify, and
- How the filing fee should be calculated.

Other activities

The Mergers and Acquisitions Division, in col-

laboration with the Office of the Secretary to the Commission, the Corporate Services Division, the Economics and Sector Research Division and the Restrictive Business Practices Division, organised a Competition Law Seminar on 24 March 2014. The objective of the Seminar was to inform stakeholders about the Commission's role and the importance of competition in the Namibian market and in general. The Seminar focused on the following topics:

- The role of competition law in a market economy
- The interface with regulatory authorities
- Developing a competition culture, and
- The role of purchasing authorities/agents.

The event comprised a one-day workshop for invited stakeholders and four days of internal training for staff members.

Restrictive Business Practices



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Ms. Cynthia Mukendwa
Economist

INTRODUCTION

The Restrictive Business Practices Division enforces Chapter 3 of the Competition Act, which deals with agreements, concerted practices or decisions by undertakings that have or are intended to have an effect on competition; abuse of dominance; and exemption applications. The Division assesses and investigates complaints of alleged anti-competitive practices. Secondly, it receives, assesses and decides on exemption applications. Thirdly, the Division decides on appropriate penalties for infringement of Parts I and II of Chapter 3 of the Act. Fourthly, the Division provides advisory opinions to the general public on matters relating to competition law and the Namibian economy.

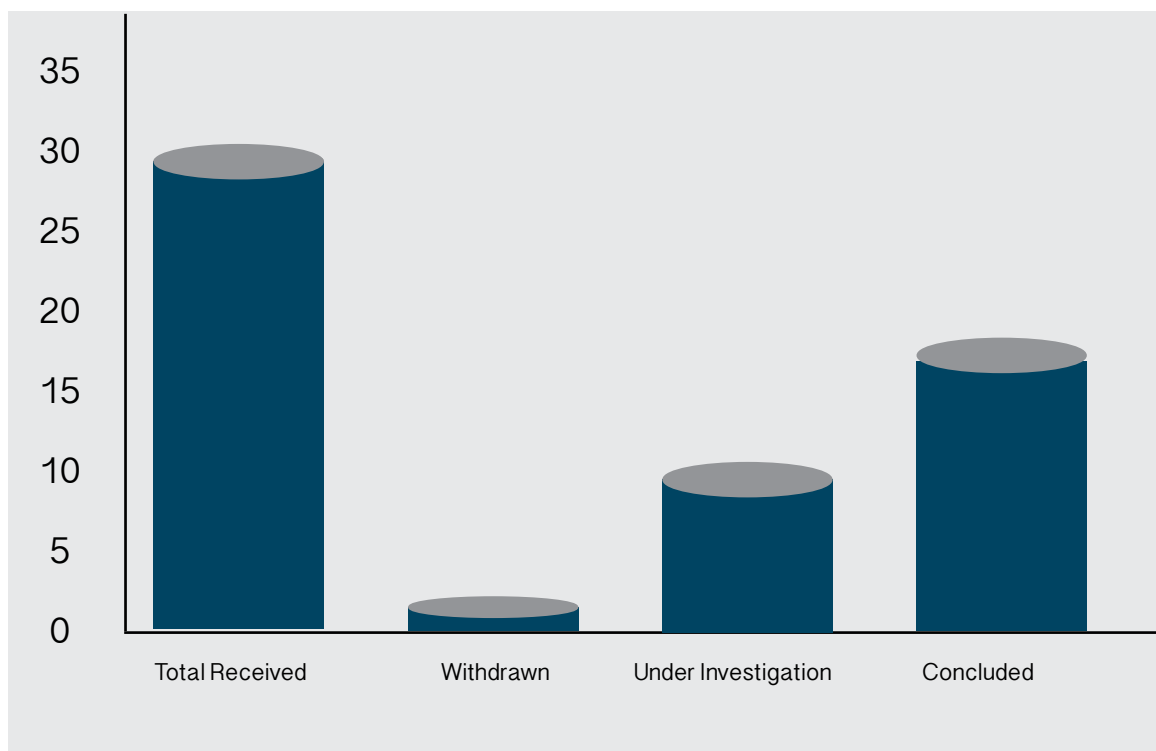
As per section 33 of the Competition Act, the Division is required to screen any information or complaint received in the prescribed manner and form. After screening, the Commission de-

cides whether or not to launch an investigation into the alleged conduct. The Commission's decision will depend on the complaint as well as information gathered during the screening process. Thus, it is important for anyone filing a complaint or providing information to the Commission to provide as much detail of the matter as possible and to follow the guidelines set out in the Act.

NEW CASES

In the 2013/14 financial year, the Division dealt with eight new cases. These consisted of five complaints, two advisory opinions, and one exemption application. Although all complaints had been screened by the end of the reporting period, only two had been concluded; the remainder are still under investigation. Both advisory opinions were provided, while the one exemption report was finalised. Figure 8 shows all cases handled during the year under review.

Figure 8: Cases handled



COMPLAINTS REGARDING ANTI-COMPETITIVE CONDUCT

The Competition Act distinguishes between two spheres of anti-competitive conduct, namely –

- agreements, concerted practices or decisions by undertakings that have or are intended to have an effect on competition, and
- abuse of dominance.

Of the complaints dealt with by the Division during the period under review, 11 (52% of the total received) were cases of dominance being abused. These were assessed in terms of section 26 of Chapter 3 of the Competition Act. Another 10 cases (comprising the remaining 48%) fell under section 23 of the Competition Act, which deals with restrictive practices that are prohibited. Table 5 presents the cases processed during the reporting year in regard to anti-competitive conduct.

Table 5: Complaints regarding anti-competitive conduct

Type of case	Total	Percentage of total cases
Agreements/concerted practices/decisions intended to have or having an effect on competition	10	48
Abuse of dominance	11	52
TOTAL	21	100

COMPLAINTS AND EXEMPTION APPLICATIONS, BY SECTOR

Figure 9 shows the various sector of the economy under which the complaints and exemption applications fell. The highest number of cases handled (19%) were in Wholesale and retail trade; repair of motor vehicles and motorcycles, followed by Accommodation and food service activities (13%) and Information and communication technology (ICT)/Telecommunication (13%). The Construction, Energy, Health, Legal services, Mining and quarrying and Online media sectors showed the lowest number of cases (3.23% each).

EXEMPTION APPLICATIONS: POTENTIAL IMPACT ON SMES

Namibia's Competition Act is not in itself a system for protecting SMEs. Nevertheless, it ensures that SMEs have an equal opportunity to participate in the economy. Through its exemption application investigations, therefore, the Division takes into account the potential impact that granting an exemption – whether conditional or not – would have on SME competitiveness. Indeed, the Commission encourages SMEs to report any anti-competitive activities they notice or experience. To this end, the Commission focuses on advocacy and awareness campaigns through various platforms such as the annual Competition Week and trade fairs. The Commission specifically takes into ac-

count any barriers to entry that may result from anti-competitive practices, abuse of dominance, or exemptions granted. Such barriers may retard and/or block an SME's entry or expansion into the market concerned.

The Division also provides legal opinions on request, especially to SMEs, in order to enhance familiarity with the Competition Act. Such knowledge acts as a catalyst, enabling SMEs to report any anti-competitive practice they may detect or experience.

petition issues that contravene section 53(3) of the Competition Act, covers two bases of calculating a pecuniary penalty. These are a maximum of 10% of global turnover, and 10% of affected turnover multiplied by the duration (in years) of the contravening conduct.

The next reporting year will also see the Division drafting guidelines for a methodology to be used by staff to set appropriate pecuniary penalties for contraventions of the Act. These guidelines are intended for use internally as well as by external stakeholders.

MAJOR POLICY INITIATIVES

The Commission developed a guiding document to assist the Division in handling cases. This Restrictive Business Practices Internal Manual serves as a tool for monitoring progress on a case, starting from the screening process to the final investigation report. The Manual also offers a framework for the Division's technical staff in respect of executing their day-to-day activities. The Commission is currently busy with summarising the manual to create a pocket-size version.

PLANNED ACTIVITIES FOR 2014/15

Experience has shown that there is a lack of understanding among external stakeholders in respect of the manner and form in which a complaint should be filed. On many occasions complainants have been asked to revise their submissions as they fell short of what the Commission required. Therefore, in the 2014/15 financial year, the Division will develop non-binding guidelines on filing a complaint aimed at assisting stakeholders in this regard.

The Division is also busy developing a small model to be used in calculating and setting pecuniary penalties. The model, which uses com-



CASE STUDY

Tullow exemption application

In 2014, the Commission granted the National Petroleum Corporation of Namibia (Pty) Ltd, Tullow Kudu Ltd and Cieco E&P Namibia Co. Ltd a conditional exemption in respect of engaging in practices prohibited under section 23 of the Competition Act. In this regard, the Commission acted on the strength of section 27 of the Act, which provides for any undertaking or association of undertakings to be exempted from restrictive agreements, practices and decisions as well as the abuse of a dominant position. However, for the exemption to succeed, the applicants are to show that such conduct would –

- lead to maintenance or promotion of exports
- enable small undertakings owned or controlled by historically disadvantaged persons to become competitive
- improve, or prevent a decline in, the production or distribution of goods or the provision of service
- promote technical or economic progress or stability in any industry designated by the Minister (after consultation with the Minister responsible for that industry), and/or

- lead to a certain benefit for the public which outweighs the resultant lessening of competition.

The Commission is empowered to grant such exemptions if there are exceptional and compelling public policy justifications why the particular restrictive business practice ought to be excluded from the Act's provisions for restrictive agreements, practices and decisions or the abuse of dominance. In the case in point, the applicants were joint holders of a 25-year Production Licence, No. 003, in terms of which they were entitled to explore for and produce natural gas within the licence area, inclusive of the Kudu Gas Field. Pursuant to the Production Licence, the applicants entered into a Production Agreement with the Government of Namibia and a Joint Operating Agreement among themselves. A third agreement, for the sale of gas, was developed for the applicant's relationship with Kudu Power. The Commission found that the nature of the Joint Operating Agreement with the Government and the Draft Gas Sales Agreement with Kudu Power constituted a vi-



olation of section 23(3)(a) of the Act, as they both amounted to an agreement to supply gas to Kudu Power on the same terms and conditions and at the same price for each of the applicants, i.e. National Petroleum Corporation of Namibia (Pty) Ltd, Tullow Kudu Ltd and Cieco E&P Namibia Co. Ltd. In terms of the agreements, the applicants were expected to share commercially sensitive information which, under normal circumstances, would be confidential and unavailable to competitors. By implication, it would result in the applicants –

1. agreeing on a common selling price for natural gas
2. controlling production
3. controlling market outlet and access
4. allocating customers, and
5. allocating areas of trade.

Although the agreements implicated the applicants in a contravention of the Competition Act, an analysis of the object and purpose of the agreements indicated that their purpose was not to restrict competition, but to facilitate the establishment of an upstream gas production industry supported by an anchor customer in the form of Kudu Power. Given the significant costs, risks and economies of scale required to realise a project of such magnitude, it was unlikely that any of the applicants would have been able to independently finance the project.

The application contained a number of factors that strongly suggested the agreements were ancillary to the broader objective of producing, processing and transporting gas to Kudu

Power. Firstly, the framework of the joint-venture arrangements explicitly provided for the production, processing and delivery of gas in a single stream through a single set of facilities. Separate commercial negotiations between the applicants and Kudu Power would not be practical, given the integrated nature of the project. Secondly, although the arrangements would control production, the rationale for the joint venture was to enable the establishment of an entity that would bring to the Namibian economy a product not previously available. Thirdly, negotiations between the supplier and purchaser would be conducted at arm's length. The price would be comprised of the applicant's upstream input costs as well as a reasonable rate of return. Furthermore, it was expected that an independent expert would assess the proposed price in order to ensure that it was in line with international benchmarks.

The Commission considered the following pro-competitive benefits arising from the project:

1. Through the joint venture, the project would result in an entity that would produce gas and would enable a downstream electricity-producing sector. This constituted an increase in productive activity hitherto unavailable to the Namibian economy.
2. The gas would be used to generate electricity in an 800-MW power station. NamPower would purchase approximately half of the power generated for sale to domestic customers in Namibia, while the balance would be exported and sold to foreign customers. This increase in exports represented a con-



- siderable pro-competitive benefit, and
3. The joint-venture arrangement enabled the establishment of an 'anchor project', an important foundation for the development of an upstream gas production industry. This was made commercially feasible by the establishment of an anchor customer in the form of Kudu Power.

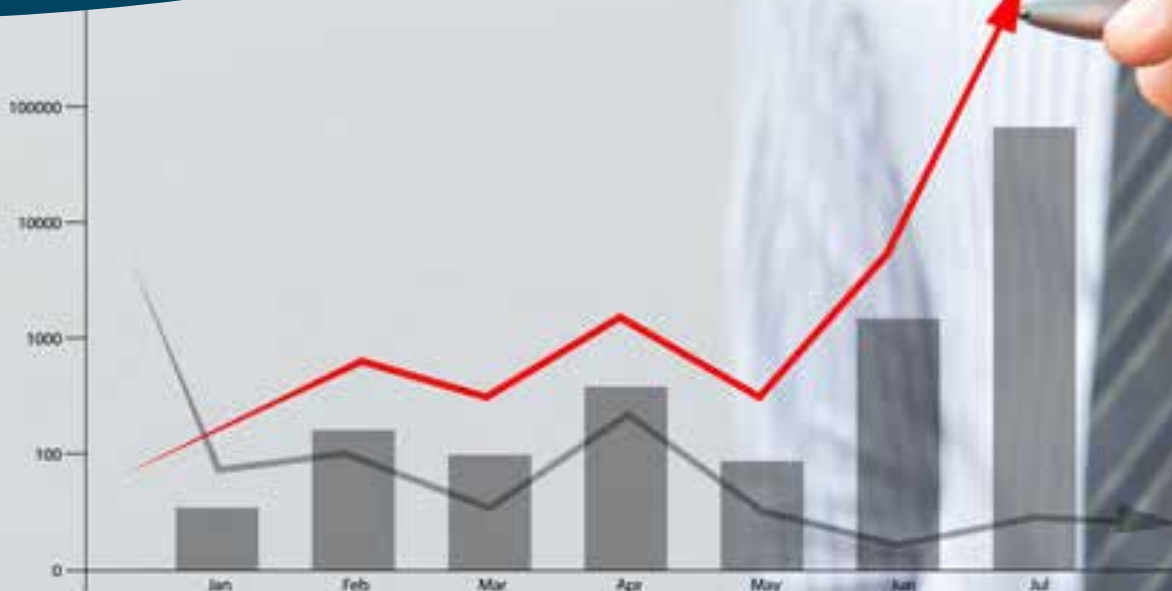
An important outcome of the Commission's evaluation was the recognition that there were considerable barriers to entry and substantial economies of scale in production and processing that significantly limited the extent to which competition could act as a constraint on the dominant (and often monopoly) positions of incumbents. This was particularly so in the case of new developments, where initially high set-up costs and entry barriers had to be overcome under conditions of risk. The Commission found that the market for the production and processing of gas, as well as the market for the transportation of gas via pipeline, was not likely to be one in which competition was effective in constraining the market power of the joint-venture entity, and that this was an unavoidable outcome in a situation where there were considerable costs associated with entering the market. The benchmarking of experience in other jurisdictions confirmed that this approach was consistent with international best practices to allow for the creation of an anchor project supported by an anchor customer on the basis

of a joint-venture arrangement. It was anticipated that the joint-venture agreements would allow for sufficient funds to be raised and for collaboration among appropriately experienced and skilled partners who were able to earn a sufficient return on their investments.

However, due to the long-term nature of the supply agreements, there was concern that, despite these initial benefits, long-term contracts might result in market foreclosure, whereby either a downstream distributor was denied sources of energy supply or a major downstream customer was locked in, resulting in new entrants in the upstream market having limited or no outlet for their product. Therefore, it was important for the Commission to monitor conditions in the market to ensure that the benefits of the joint venture were not outweighed by any restrictions on competition that might arise in future. Another concern was with the extent of sharing of commercially sensitive information facilitated in the terms and conditions of the joint operating agreement: while this might be unavoidable at the early developmental stage, it was important to safeguard against any potential misuse of such information for purposes of restricting competition as the market developed.



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INTRODUCTION

The Economics and Sector Research Division is responsible for economic analysis, evaluating the economic impact of competition cases and policy initiatives, and conducting market enquiries for the informed enforcement of competition law. This involves providing rigorous economic analyses of cases and investigations into mergers and restrictive conduct. The Division also provides independent guidance on methodological issues relevant to economics in the application of Namibian competition rules.

General monitoring of key market sectors and generating knowledge from a competition perspective also fall within the Division's ambit. Additionally, the Division is responsible for exploring emerging issues in the area of competition law, and advises on the continual revision of the design of the Competition Act. It ensures that the Commission relies on strategic alliances, skills acquisition and networks to tap into best practices by other competition authorities and similar institutions. Finally, the Division also coordinates the Commission's work on the National Competition Policy (NCP) and on consumer protection issues.

During the 2013/14 fiscal year, the Division embarked on several projects in its quest to fulfil its mandate and to effectively implement the Competition Act. Among other things, the then Ministry of Trade and Industry tasked the Division with crafting the NCP. The Policy will offer an overarching framework for imbuing competition policy, legislation and rules into other development tools in order to support the country's long-term national development plan, Vision 2030. The Division also embarked on new studies aimed at deepening its understanding of certain economic sectors, uncovering competition-related concerns, and devising possible remedies.

NATIONAL COMPETITION POLICY

An NCP is a prerequisite for a stronger and effective competition regime, due to the crucial role it plays in the enforcement of competition law. It also helps enhance economic efficiency and competitiveness by harmonising government policies. By the end of the reporting period, Namibia's draft NCP had been crafted and submitted to the Ministry of Trade and Industry for review and finalisation.

Given the nature and historical pattern of our economy, the draft NCP considered incorporating some pertinent issues on how competition policy should 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, as well as the need to preserve efficiency arising from economies of scale and scope. These issues require specific attention in the context of avoiding excess capacity and waste in small economies with limited resources. The NCP also considered how much competition policy could contribute to the urgent problem of maintaining Namibian competitiveness in national and international markets – or, conversely, the probability of its application to reduce competitiveness, etc., in such markets.

Thus, the objectives of Namibia's NCP as set out in the draft document are as follows:

- To ensure the preservation of the competition process in Namibia, in order to protect and promote competition in order to realise optimal efficiency and the maximisation of consumer welfare
- To provide guiding principles to different branches of the Government for an effective competition assessment of policies and legislation
- To provide the basic framework of the parameters and the strategic policy considerations that will guide the review of competition legislation
- To address the regulatory and institutional

infrastructure that will ensure the effective implementation and enforcement of a competition law and policy

- To promote, build and sustain a competition culture through creating awareness and targeted advocacy initiatives, imparting training to and capacity-building among stakeholders across the broad economic and social spectrum of Namibia
- To foster competition in regulated sectors and to promote institutional coherence for synergised cooperation between and among sectoral regulators and/or competition regulators, thereby To maximise consumer welfare in terms of benefits accruing through wider choices and the high quality of goods and services at competitive prices.

MERGERS AND ACQUISITIONS: IMPACT ANALYSIS

The results of a merger study were submitted to the Ministry of Trade and Industry during the reporting period. The study analysed the effects of different types of mergers and acquisition activities on the Namibian economy, and explored the ownership structure of merged entities. The research aimed at helping to identify opportunities to develop financial capital for Namibia, guide the current debate on economic sector reservations, provide policy recommendations to Government, and assist with future analysis of mergers and acquisition cases.

The study results showed that, of the 300 mergers and acquisitions that the Commission handled between 2009 and 2013, 140 cases dealt with during the period under review (2013/14) involved local companies as targets, and came from the Real estate and business services sector. Of these 140 firms, 65% had been acquired by local individuals or companies, and 10% by South African firms and their subsidiaries. Only 8% of the 140 local firms had been acquired by other foreign entities

The study also revealed that the activities of local firms were categorised predominantly in

Real estate and business services and Wholesale, retail trade and repairs, which exhibited a low investment profile compared with a sector such as Mining, which was predominately owned by foreigners. Foreign firms and their subsidiaries dominated activities in Mining, underlining that the majority of mining companies had been acquired by foreign firms. In contrast, the South African firms and their subsidiaries acquiring local firms were categorised predominantly in Transport and communication and Wholesale, retail trade and repairs.

An analysis of the average deal size in respect of merger transactions between local, South African and other foreign companies revealed that other foreign companies topped the list with an average deal size of about N\$200 million. South African deals were next, averaging about N\$50 million, while merger deals between local companies averaged at N\$16 million. From this one could conclude that, in comparison with South African and other foreign firms, local firms merged with companies with a low investment profile. This can be attributed to a lack of capital for investing in larger projects or in companies with high investment profiles such as those in the mining sector.

COMPETITION AND THE CONSUMER

Once a year, the Commission holds a Competition Week as part of its strategy to develop a competition culture and advocacy. For the reporting year, the event was held in September 2013 under the theme "Competition Law, Policy and SMEs". Its aim was to highlight the importance to SMEs of competition law as well as the challenges facing SMEs and their potential to grow as far as competition law and policy were concerned. As with past events of this nature, the activities for the week included a workshop, talk shows and interviews on radio and television, a lecture to students, and an essay competition for Law and Economics students at the Polytechnic of Namibia and the University of Namibia. The workshop brought together over 60 participants. These came from policy organisations

(Ministry of Trade and Industry, Namibian Competition Commission), SME associations, SMEs in various economic sectors, and private organisations. Distinguished speakers with an array of experience in retail/trade, manufacturing and tourism made presentations to SMEs in their sectors. SMEs in turn shared their experiences and challenges regarding growth. On behalf of the Government, the Ministry of Trade and Industry delivered a presentation on its industrial development promotion programmes, with a particular focus on SME support schemes.

The main outcome of the workshop was to identify the challenges facing SMEs. These include issues pertaining to economies of scale, access to funding, access to affordable work space, access to markets, shortages of skilled labour, the cost of doing business, bureaucracy, statutory obligations, the tax regime and levies/fees. Considering all the challenges faced by SMEs in comparison with other economic players in the Namibian market, most SMEs pointed out that Government should consider protecting SMEs from foreign competition. Considering that Namibia was a signatory to World Trade Organization and other trade agreements, the issue of whether competition and protectionism could coexist was raised during panel discussions; most participants argued in favour of such a coexistence.

ADMINISTERED PRICES STUDY

This new project commenced during the reporting period under the auspices of the Economics and Sector Research Division together with an automotive study (see next section herein) and is expected to be completed by the end of the 2014/15 financial year. The Administered Prices Study, commissioned by the Ministry of Trade and Industry, aims to gain a deeper understanding of –

- the price-setting mechanisms for the water, electricity, rail, road, air and port service sectors
- factors impacting on their prices, and
- possible competition concerns in these sectors.

The sectors under study provide important economic inputs for firms and consumers in the Namibian economy. The research revealed that administered prices collectively accounted for about 17.15% of the Consumer Price Index.

The study also revealed that recent developments in these sectors had occasioned an overall rise in administered prices in the economy. Most of these increases had occurred in electricity tariffs, which represented an important cost-push driver of rising administered prices. Water, transport, road, air and rail prices had also risen above inflation rates, placing upward pressure on the Consumer Price Index.

The behaviour of administered prices has a major influence on the competitiveness of an economy. Given the importance of the water, electricity, rail, road, air and port service sectors to the Namibian economy and their linkages to other sectors, the Commission saw the need to initiate a study in these key sectors to ensure that essential infrastructure services were provided for optimal social welfare.

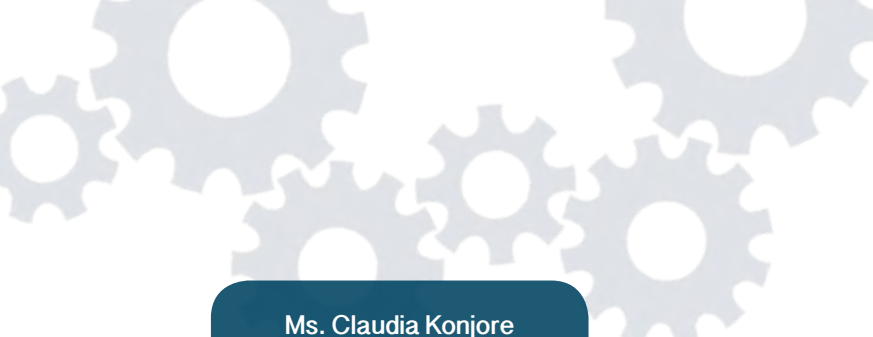
AUTOMOTIVE STUDY

As with the Administered Prices Study, the Automotive Study was a directive from the Ministry of Trade and Industry during the year under review to undertake research into the relevant industry in order to uncover competition issues and other strategic areas/issues that needed to be addressed. The study is at an advanced stage and is nearing completion.

A number of research tools were used in developing the study. The first stage began with a concept note in the automotive industry). Unstructured qualitative interviews were conducted with a number of stakeholders in the industry. These included dealers, spare parts providers, insurance providers and panel beaters to gauge the extent to which domestic market changes were occurring. It was also used to assess competition in different subsectors of the automotive industry and to get a better picture of the industry's market structure and dynamics.

Corporate Services





Ms. Claudia Konjore
Receptionist



Ms. Izelda Goagoses
Records and Documentations
Clerk



Ms. Valentina Schaneck
Senior Human Resource
Practitioner





Mr. Gideon //Garueb
Director



Mr. Marius Eichab
Office Assistant



Mrs. Dina Gowases
Corporate Communications
Officer

INTRODUCTION

The Corporate Services Division provides support services to the Commission's operations Divisions in terms of human resources management, administration and finance, and corporate communications. The Corporate Services Division's strategic objective is to –

- develop the Commission as a centre of operational excellence in competition regulation, and
- enhance competition advocacy towards the fulfilment of sound competition principles and practices.

In executing its strategic objective, the Division has identified the following core activities:

- Core Activity 1: Management of human capital
- Core Activity 2: Financial position and financial performance review
- Core Activity 3: Corporate communications
- Core Activity 4: Administration

CORE ACTIVITY 1: MANAGEMENT OF HUMAN CAPITAL

The Commission regards its human capital as its most valuable asset. We strive to always employ best practices in managing our human resources, and believe that building capacities and capabilities and developing talent are the most important aspect of our resource allocations. The Commission believes that, due to the nature of our mandate, and the shortage of requisite skills to successfully execute it, we should remain vigilant to the dynamics of unnatural labour turnover. Hence, we ensure we always strive for best practices to retain, motivate and reward our staff.

STAFF COMPLEMENT

During the period under review, the Commission added three new posts to its establishment, which were filled. During the same period the Commission had a staff turnover of two

members, and one member passed away. This brought the Commission's total staff complement to 31 (see Table 6).

Table 6: Staff complement as at 31 March 2014

Office of the Secretary to the Commission/CEO: 4

- Secretary to the Commission
- Executive Assistant to the Secretary to the Commission
- Corporate Secretary
- Technical Advisor to the CEO

Mergers and Acquisitions: 7

- Director
- Senior Economist
- Senior Law Officer
- Law Officer (2)
- Economist (2)

Restrictive Business Practices: 7

- Director
- Senior Law Officer
- Law Officer (2)
- Economist (2)
- Administrative Assistant

Economics and Sector Research: 4

- Director
- Senior Researcher
- Researcher
- Administrative Assistant

Corporate Services: 9

- Director
- Office Assistant
- Officer: Administration
- Officer: Human Resources
- Assistant Accountant (vacant)
- Office Assistant
- Senior Human Resources Practitioner
- Officer: Corporate Communications
- Driver/Messenger

STAFF TRAINING AND DEVELOPMENT

Besides capacity-building and training in the Commission's core operational business of competition law and policy implementation, staff training and development in the Commission's other activity areas were also undertaken during the period under review.

The focus areas in respect of training and development comprised capacity-building in core/technical skills. These skills included merger analysis and cartel investigations. Corporate governance and administrative skills training was also provided to all staff. With these interventions, the Commission covered 100% of the training needs identified during the reporting period.

CORE ACTIVITY 2: FINANCIAL POSITION AND FINANCIAL PERFORMANCE REVIEW

The Commission's financial year ended on 31 March, as determined in section 20(3) of the Competition Act. For the 2013/14 review period, the Commission recorded total assets amounting to N\$25 million (N\$25.5 million in 2012/13), which represents a decrease of 2% in comparison with the previous financial year. The Commission registered a net loss of N\$634,007 in 2013/14 after the deduction of N\$26.8 million in operational expenses dedicated to implementing its mandate.

The Commission's financial position for the 12-month reporting period was strengthened by the receipt of an N\$18-million grant from the Ministry of Trade and Industry. It also generated an increase in income amounting to N\$26.2 million for the reporting year. This increase was predominantly composed of grants, which made up 69% of the total income. Of the total income, only 27% was generated from merger filing fees, while 5% was attributable to interest income from investment accounts. The average monthly income received during the financial year 2013/14 was N\$2.1 million, which is an

improvement of almost 4% compared with the previous year's monthly average of N\$2 million.

The monthly average operating expenses for the year under review reached N\$2.2 million compared with about N\$2.1 million in 2012/13, which represents an increase of about 2%. The top five expenses that significantly contributed to the Commission's operating expenditure structure were salaries and wages (51%), rent (10%), training costs (9%), advertising (7%) and consulting fees (4%) (see Figure 11).

Core Activity 3: Corporate communications

The aim of the Commission's communication and advocacy efforts are to create clear and consistent messages, make the best use of communication resources, simplify core messages, and present complex technical information simply and consistently. During the period under review the following activities were undertaken in this regard:

- Participation in the Made in Namibia Expo
- Participation in the Erongo, Karasburg, Keetmanshoop and Ongwediva trade fairs and exhibitions and the Windhoek Agricultural Show
- Participation in various public media talk shows such as Good Morning Namibia, Business Today and Talk of the Nation
- Launching of the pilot phase of an internal newsletter
- Quarterly production of external newsletters
- Organising the Annual Consumer Protection and Competition Week hosted by the Economics and Sector Research Division
- Participation in ad-hoc social responsibility programmes, including making contributions to career expos, the Bursary Fund, and the Namibian Women Summit, and
- Provision of a platform at its premises to students when they do assignments related to competition law enforcement.

CORE ACTIVITY 4: ADMINISTRATION

The Division provides an enabling environment in terms of office space, Information Technology and other logistical needs for the effective implementation of the Commission's core mandate. Its activities in the reporting year were successful in this regard, as demonstrated, for example, by IT uptime being at around 90%, which enhanced operational efficiency.

The Division also enhanced the services provided by the Information and Resource Centre, thus aiding the Commission's technical Divisions with knowledge-gathering on relevant case law in specialised areas of cartels, enforcement and exemptions.

On the advocacy front, the Administration Division provided a full marketing communications service to industry stakeholders, along with various non-enforcement programmes and activities. These initiatives focused on media relations, marketing, design services, internal communication, and advocacy.

The Division's support included assistance with the external newsletter and piloting the internal newsletter. The latter aims to motivate staff and build their morale by recognising their contributions and accomplishments. The internal newsletter also serves to facilitate communication on the Commission's goals, policies and priority areas. The external newsletter, on the other hand, serves as an effective vehicle for publicising and promoting developments within the Commission. The key is to educate and inform decision-makers and, ultimately, the general public about what the Commission does.



Annual Financial Statements

REPUBLIC OF NAMIBIA



TO THE HONOURABLE SPEAKER OF THE NATIONAL ASSEMBLY

I have the honour to submit herewith my report on the accounts of the Namibian Competition Commission for the financial year ended 31 March 2014 in terms of Article 127(2) of the Namibian Constitution. The report is transmitted to the Honourable Minister of Trade and Industry in terms of Section 21(2) of the Competition Act, 2003 (Act 2 of 2003)

A handwritten signature in dark ink, appearing to read 'Junias Etuna Kandjeke', is centered within a rectangular box.

WINDHOEK, July 2015

**JUNIAS ETUNA KANDJEKE
AUDITOR-GENERAL**

**REPORT OF THE AUDITOR- GENERAL
ON THE ACCOUNTS OF THE NAMIBIAN COMPETITION
COMMISSION FOR THE FINANCIAL YEAR ENDED
31 MARCH 2014**

1. REPORT OF THE FINANCIAL STATEMENTS

1.1 INTRODUCTION

This report on the accounts of the **Namibian Competition Commission** for the financial year ended **31 March 2014** is presented to the National Assembly in accordance with the terms of Article 127(2) of the Constitution of the Republic of Namibia and provisions set out in State Finance Act, 1991(Act 31 of 1991), as amended. Figures in the report are rounded to the nearest Namibia dollar and deficits are indicated in (brackets).

I certify that I have audited the accompanying financial statements of the **Namibian Competition Commission** for the financial year ended 31 March 2014. These financial statements comprise the following statements for the year then ended.

Balance sheet
Comprehensive income statement
Statement of changes in equity
Cash flow statement
Notes to the financial statements
Detailed income statement

The financial statements were submitted timeously by the Accounting officer to the Auditor General on 30 June 2014 in terms of section 20 (3) of the competition Act, Act 2 of 2003.

The financial statements notes to the financial statements and general information provided by the Accounting Officer are attached as Annexure A-F.

2. MANAGEMENT'S RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Section 12 & 13 of the State Finance Act, Act 31 of 1991 and relevant legislation, and for such internal control as management determines it necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

3. AUDITOR'S RESPONSIBILITY

My responsibility is to express an opinion on these financial statements based on the audit. I conducted the audit in accordance with International Standards for Supreme Audit Institutions (ISSAIs). These standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

Powers and duties

Section 25(1)(c) of the State Finance Act, 1991, provides that the Auditor-General should satisfy himself that:

- (a) all reasonable precautions have been taken to ensure that all monies due to the State are collected, and that the laws relating to the collection of such monies have been complied with;
- (b) all reasonable precautions have been taken to safeguard the receipt, custody and issue of and accounting for, the State's assets, such as stores, equipment, securities and movable goods; and
- (c) the expenditure has taken place under proper authority and is supported by adequate vouchers or other proof.

In addition, Section 26(1)(b)(iv) of the State Finance Act, 1991, empowers the Auditor-General to investigate and report on the economy, efficiency and effectiveness of the use of the State's resources.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for the audit opinion.

4. KEY AUDIT FINDINGS

No key audit findings were discovered during the audit.

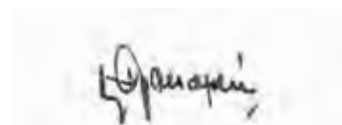
5. ACKNOWLEDGEMENT

The assistance and co-operation of the staff of the Commission during the audit is appreciated.

6. UNQUALIFIED AUDIT OPINION

The financial statements of the Namibian Competition Commission for the financial year ended 31 March 2014 were audited by me in accordance with the provisions of Section 25 of the State finance Act read with section 20(4) of the Competition Act, 2003 (Act 2 of 2003)

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Namibian Competition Commission as at 31 March 2014, and its financial performance and its cash flows for the year then ended in accordance with the International Financial Reporting Standards (IFRS).



WINDHOEK, July 2015

**JUNIAS ETUNA KANDJEKE
AUDITOR-GENERAL**

**NAMIBIAN COMPETITION COMMISSION
ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR ENDED 31
MARCH 2014**

GENERAL INFORMATION

Country of Incorporation and domicile	Namibia
Nature of business and principal activities	The Commission is tasked with promoting competitive market conditions through investigations and prosecutions of anti- competitive activities, reviewing and approving mergers and exemption applications, and disseminating information to businesses, consumers and other stakeholders.
Secretary	H M Gaomab II
Business address	No. 14 BPI House Mezzanine Floor Independence Avenue Windhoek
Postal address	P. O. Box 2104 Windhoek Namibia
Bankers	Bank Windhoek Limited
Auditors	Auditor-General

NAMIBIAN COMPETITION COMMISSION
ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR ENDED
31 MARCH 2014

COMMISSION'S RESPONSIBILITIES & APPROVAL

The Commission is required by the Competition Act (Act No. 2 of 2003), to maintain adequate accounting records and is responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is their responsibility to ensure that the annual financial statements fairly present the state of affairs of the Commission as at the end of the financial 12 months and the results of its operations and cash flow for the period then ended, is in conformity with International Financial Reporting Standards and the Competition Act of Namibia (Act No. 2 of 2003).

The annual financial statements are prepared in accordance with International Financial Reporting Standards and Competition Act (Act No. 2 of 2003) and are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

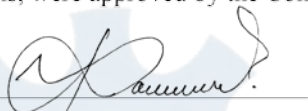
The Commissioners acknowledge that they are ultimately responsible for the system of internal financial control established by the Commission and place considerable importance on maintaining a strong control environment. To enable the Commission to meet these responsibilities, the Commission sets standards for internal control aimed at reducing the risk of error or loss in a cost effective manner. The standard includes the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable risk level.

These controls are monitored throughout the Commission and all employees are required to maintain the highest ethical standard in ensuring the Commission's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the Commission is identifying, assessing, managing and monitoring all known forms of risk across the Commission. While operating risk cannot be fully eliminated, the Commission endeavours to minimise it by ensuring that appropriate infrastructure, control, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Commissioners are of the opinion, based on the information and explanations given by management that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or loss.

The Commissioners have reviewed its cash flow forecast for the 12 months to 31 March 2014 and, in light of this review and the current financial position, they are satisfied that the Commission has or has access to adequate resources to continue in operational existence for the foreseeable future.

The annual financial statements set out on page 8 to 11, which have been prepared on the going concern basis, were approved by the Commission and were signed on its behalf by:



Chairman of the Commission
Windhoek



Commissioner

NAMIBIAN COMPETITION COMMISSION
ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR ENDED
31 MARCH 2014
SECRETARY'S REPORT

The Secretary submitted his report for the 12 months ended 31 March 2014.

1. INCORPORATION

The Commission was incorporated on 24 April 2003 in accordance with the promulgation of the Competition Act, 2003 (Act No. 2 of 2003).

2. REVIEW OF ACTIVITIES

Main business and operations

The Commission is tasked with promoting competitive market conditions through investigations, prosecutions of anti-competitive activities, reviewing and approving mergers and exemptions applications, and disseminating information to businesses, consumers and other stakeholders, operates principally in Namibia.

The operating results and state of affairs of the Commission are fully set out in the attached annual financial statements and do not in our opinion require any further comments.

The Commission made a net loss (N\$ 634 007) for 2013/2014 and a net surplus for the 2012/2013 financial year of N\$ 2 882 636.

3. GOING CONCERN

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and the realisation of assets and settlement of liabilities, contingent obligations and commitments occur in the ordinary course of business.

4. POST BALANCE SHEET EVENTS

The Secretary informs that the new Chairperson of the Board was appointed on 17 September 2014.

5. MEMBERS OF THE COMMITTEE

Members	Date Appointed	Nationality
Ms. Malverene Theron	17 September 2013	Namibian
Mr Festus Hangula	19 December 2008	Namibian
Ms Nelago Saima Kasuto	19 December 2008	Namibian
Dr Omu Kakujaha - Matundu	19 December 2008	Namibian
Mr.Nghidinua Daniel	01 February 2010	Namibian

6. SECRETARY

The Secretary of the Commission during the date of this report is as follows:

Name	Date Appointed	Nationality
Mr Heinrich M. Gaomab II	01 September 2009	Namibian

NAMIBIA COMPETITION COMMISSION

BALANCE SHEET FOR THE FINANCIAL YEAR ENDED 31 MARCH

	Notes	2014 N\$	2013 N\$
ASSETS			
Non-current assets			
Property, plant and equipment	3	1 689 329	1 936 684
Current assets			
Trade and other receivables	4	408 268	685 477
Cash and cash equivalents	5	22 968 274	22 932 039
Total assets		25 065 871	25 554 200
EQUITY AND LIABILITIES			
Accumulated surplus		23 972 680	24 656 686
Current Liabilities			
Trade and other payables	6	1 093 191	897 514
Total Equity and Liabilities		25 065 871	25 554 200

NAMIBIAN COMPETITION COMMISSION

INCOME STATEMENT FOR THE FINANCIAL YEAR ENDED 31 MARCH

	Notes	2014 N\$	2013 N\$
Revenue	7	25 004 690	24 284 000
Operating expenses		(26 888 402)	(22 304 113)
Operating profit/(Loss)		(1 883 712)	1 979 887
Investment revenue	8	1 249 705	952 749
Total comprehensive income for the 12 months		(634 007)	2 932 63

NAMIBIAN COMPETITION COMMISSION

STATEMENT OF CHANGES IN EQUITY FOR THE FINANCIAL YEAR ENDED
31 MARCH

	Accumulated surplus	Total equity
	N\$	N\$
Balance at 01 April 2012	21 724 051	21 724 051
Changes in equity		
Total comprehensive income for the 12 months	2 932 636	2 882 636
Total changes	24 656 687	24 656 636
Balance at 01 April 2013	24 656 687	24 656 687
Changes in equity		
Total comprehensive Loss for the 12 months	(634 007)	(634 007)
Total changes	(634 007)	(634 007)
Balance at 31 March 2014	24 022 680	24 022 680

NAMIBIAN COMPETITION COMMISSION

CASH FLOW STATEMENT FOR THE FINANCIAL YEAR ENDED 31 MARCH

	Notes	2014 N\$	2013 N\$
Cash flow from operating activities			
Cash receipts from customers and government grants		25 004 690	24 284 000
Cash paid to suppliers and employees		(25 611 487)	(21 582 455)
Cash generated from operations	9	(606 797)	2 701 545
Interest income		1 249 705	952 749
Net cash from operating activities		642 908	3 654 294
Cash flows from investing activities			
Purchase of property, plant and equipment	3	(606 673)	(1 280 502)
Total cash movement for the 12 months		36 235	2 373 792
Cash at beginning of the 12 months		22 932 039	20 558 247
Total cash at end of the 12 months	5	22 968 274	22 932 039

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH 2014

1. ACCOUNTING POLICIES

1.1 PRESENTATION OF ANNUAL FINANCIAL STATEMENTS

The annual financial statements have been prepared in accordance with International Financial Reporting Standards, and the Competition Act (Act No. 2 of 2003). The annual financial statements have been prepared on the historical cost basis, and incorporate the principal accounting policies set out below.

The annual financial statements are prepared in conformity with International Financial Reporting Standards and the requirements of the Competition Act of Namibia, appropriate to the business of the Commission. The annual financial statements are prepared under the historical cost convention as modified by the revaluation of certain property, plant and equipment, marketable securities and investment properties where appropriate, and incorporate the principal accounting policies set out below.

These accounting policies are consistent with the previous period.

1.1.1 Statement of compliance

The financial statements are prepared in compliance with International Financial Reporting Standard (IFRS) and Interpretations of those standards, as adopted by the International Accounting Standard Board (IASB) the requirements of the Competition Act of Namibia.

1.1.2 Significant judgements

In preparing the annual financial statements, management is required to make estimates and assumptions that affects the amounts represented in annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Significant judgements include:

Loans and receivables

The Commission assesses its loans and receivables for impairment at each balance sheet date. In determining whether an impairment loss should be recorded in an income statement, the Commission makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flow from a financial asset.

Taxation

The Commission has interpreted the Competition Act and Tax laws and concluded that the Commission is exempted from taxation.

1.1.3 Property, plant and equipment

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefit associated with the item will flow to the Commission; and
- the cost of the item can be measured reliably.

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

The residual value and useful life of each asset are reviewed at each financial period-end.

Costs include costs incurred initially to acquire or construct an item of property, plant and equipment and costs incurred subsequently to add to, replace part of or service it. If a replacement cost is recognised in the carrying amount of an item of property, plant and equipment, the carrying amount of the replaced part is derecognised.

The initial estimate of the cost of dismantling and removing the item and restoring the site on which it is located is also included in the cost of property, plant and equipment.

Item	Average useful life
Furniture and fixture	3 Years
Motor vehicles	5 Years
IT equipment and softwares	3 Years
Other fixed asset	3 Years
Office equipment	3 Years
Cell phones	2 Years
Minor Assets	0 Years

The residual value and useful life of each asset are reviewed at the end of each financial period.

Each part of an item of property, plant and equipment with a cost that is significant in relation to the total cost of the item shall be depreciated separately.

The gain or loss arising from the de-recognition of an item of property, plant and equipment is included in profit or loss when the item is derecognised. The gain or loss arising from the de-recognition of an item of property, plant and equipment is determined as the difference between the net disposable proceeds, if any, and the carrying amount of the item.

1.1.4 Financial instruments

Initial recognition and measurements

Financial instruments are recognised initially when the Commission becomes a party to the contractual provisions of the instruments.

The Commission classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

Financial instruments are measured initially at fair value, except for equity investments for which a fair value is not determinable, which are measured at cost.

For financial instruments which are not at fair value through profit or loss, transaction costs are included in the initial measurement of the instrument.

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

Fair value determination

The fair values of quoted investments are not based on current bid prices. If the market for a financial asset is not active (and for utilised securities), the Commission establishes fair value by using valuation techniques. These discounted cash flow analysis, and option pricing models making maximum use of market inputs and relying as little as possible on entity-specific inputs.

Trade and other receivables

Trade receivables are measured at initial recognition at fair value, and are subsequently measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in profit or loss when there is objective evidence that the asset is impaired. Significant financial difficulties of debtor, probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 30 days overdue) are considered indicators that the trade receivable is impaired. The allowances recognised is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

Trade and other receivables are classified as loans and receivables.

Cash and cash equivalents

Cash and cash equivalents comprise cash on hand and demand deposits, and other short-term highly liquid investments that are readily convertible to known amount of cash and are subject to an insignificant risk of changes in value. These are initially and subsequently recorded at fair value.

1.1.5 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership.

A lease is classified as an operating lease if it does not transfer substantially all risks and rewards incidental to ownership.

Operating Leases - lessee

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset. This liability is not discounted.



NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

1.1.6 Impairment of assets

The Commission assesses at each balance sheet date whether there is any indication that an asset may be impaired.

If any such indication exists, the Commission estimates the recoverable amount of the asset.

If there is any indication that an asset may be impaired, the recoverable amount is estimated for the individual asset. If it is not possible to estimate the recoverable amount of the individual asset, the recoverable amount of the cash-generating unit to which the asset belongs is determined.

The recoverable amount of an asset or cash-generating unit is higher of its fair value less costs to sell and its value in use.

If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable amount. That reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortisation is recognised immediately in profit or loss. Any impairment loss of a revalued asset is treated as a revaluation decrease.

1.1.7 Provisions and contingencies**Provisions are recognised when:**

- The Commission has present obligation as a result of past event;
- it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the present value of the expenditure expected to be required to settle the obligation.

ANNEXURE E

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

1.1.7 Provisions and contingencies (continues)

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settle the obligation. The reimbursement shall be treated as a separate asset. The amount recognised for the reimbursement shall not exceed the amount of the provision.

Provisions are not recognised for future operating losses.

If an entity has a contract that is onerous, the present obligation under the contract shall be recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note.

1.1.8 Government grants

Government grants are unconditional and are recognized upon receipt in terms of the Competition Act, 2003 (Act No. 2 of 2003) of Namibia.

1.1.9 Revenue

Revenue is measured at the fair value of the consideration received or receivable and represents the amounts receivable for goods and services provided in the normal course of business, net of trade discount and volume rebates, and value added tax.

Interest is recognized, in profit or loss, using effective rate method.

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

3. PROPERTY, PLANT AND EQUIPMENT

	2014			2013		
	Cost/ Valuation	Accumulated depreciation	Carrying value	Cost/ Valuation	Accumulated depreciation	Carrying value
	N\$	N\$	N\$	N\$	N\$	N\$
Furniture and fixtures	1 669 601	(722 077)	947 524	1 447 255	(432 396)	1 014 860
Motor vehicle	530 349	(205 496)	324 853	530 350	(120 639)	409 710
IT Equipment	1 138 672	(820 616)	318 056	1 016 714	(587 048)	429 666
Other fixed assets	80 877	(31 926)	48 951	49 599	(18 522)	31 077
Office equipment	79 562	(42 854)	36 708	56 333	(25 712)	30 621
Cell Phones	57 323	(44 086)	13 237	48 582	(27 832)	20 750
Minor Assets	283 399	(283 399)	-	84 276	(84 276)	-
Total	3 839 782	(2 150 454)	1 689 329	3 233 109	(1 296 425)	1 936 684

Reconciliation of property, plant and equipment - 2014

	Opening balance	Additions	Written off	Depreciation	Total
	N\$	N\$	N\$	N\$	N\$
Furniture and fixtures	1 014 859	222 346	-	(289 681)	947 524
Motor vehicle	409 710	-	-	(84 857)	324 853
IT equipment	429 666	121 957	-	(233 568)	318 056
Other fixed assets	31 077	31 278	-	(13 404)	48 951
Office equipment	30 621	23 229	-	(17 142)	36 708
Cell Phones	20 750	8 740	-	(16 253)	13 237
Minor Assets	-	199 123	-	(199 123)	-
Total	1 936 684	606 673	-	(854 028)	1 689 329

Reconciliation of property, plant and equipment 2013

	Opening balance	Additions	Written off	Depreciation	Total
	N\$	N\$	N\$	N\$	N\$
Furniture and fixtures	453 858	780 968	-	(219 967)	1 014 859
Motor vehicle	393 256	59 880	41 430	(84 856)	409 710
IT equipment	389 486	304 193	-	(264 013)	429 666
Other fixed assets	24 198	15 471	-	(8 592)	31 077
Office Equipments	24 453	21 371	-	(15 203)	30 621
Cell Phones	24 147	14 342	-	(17 739)	20 750
Minor Assets	-	84 276	-	(84 276)	-
Total	1 309 398	1 280 502	41 430	(694 646)	1 936 684

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

	2014	2013
	N\$	N\$
4. TRADE AND OTHER RECEIVABLES		
Trade receivable	41 466	256 588
Accrued Income	57 790	41 408
Deposit	309 012	387 481
Total	408 268	685 477
5. CASH AND CASH EQUIVALENTS		
Cash and cash equivalent consist of:		
Cash on hand	542	542
Bank balances - Cheques account	735 064	580 932
Bank balances - Call account	5 587 710	4 789 019
Bank balances - Call account	10 444 958	7 214 252
Bank balances - Fixed account	6 200 000	10 347 294
Total	22 968 274	22 932 039
Credit quality of cash at bank and short term deposit, excluding cash on hand		
The credit quality of cash at bank and short term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit rating (if available) or historical information about counterparty default rates:		
A1 +	22 968 274	22 932 039
6. TRADE AND OTHER PAYABLES		
Accrued expense - PAYE: penalties & Interest	-	-
Accrued expense - Creditors	527 485	536 874
Leave provision	565 706	360 639
Total	1 093 191	897 514
7. REVENUE		
Rendering of services	7 004 690	4 722 000
Government grants received	18 000 000	19 562 000
	25 004 690	24 284 000

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

	2014	2013
	N\$	N\$
8. INVESTMENT REVENUE		
Interest revenue		
Bank	1 249 705	952 749
9. CASH GENERATED FROM OPERATIONS		
Profit before taxation	(634 007)	2 932 636
Adjustments for:		
Depreciation and amortisation	854 027	694 646
Loss written off on stolen asset		(41 430)
Interest received	(1 249 705)	(952 749)
Finance cost	-	-
Changes in working capital:		
Trade and other receivables	277 210	(229 603)
Trade and other payables	195 679	298 046
Unknown adjustment	(50 180)	-
	(606 979)	2 701 546
10. COMMITMENTS		
Operating leases - as lessee (expense)		
Minimum lease payments due		
- within one year	2 811 053	1 867 924
- in second to fifth year inclusive	3 935 474	2 715 198
	6 746 527	4 583 122

Operating lease payments represent rentals payable by the Commission for certain of its office properties. The lease was negotiated for a term of three years and rentals are fixed for the three years. No contingent rent payable.

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR
ENDED 31 MARCH (continued)

11. RISK MANAGEMENT

Capital risk management

The Commission is not exposed to Capital risk.

There are no externally imposed capital requirements.

Financial risk management

Liquidity risk

The Commission's risk to liquidity is a result of the funds available to cover future commitments. The Commission manages liquidity risk through an on-going review of future commitments and credit facilities

The below table analyses the Commission's financial liabilities and net-settled derivative financial liabilities into relevant maturity groupings based on the remaining period at the balance sheet to the contractual maturity date. The amounts disclosed in the table are the contractual undiscounted cash flows. Balances due within 12 months equal their carrying balances as the impact of discounting is not significant

At 31 March 2012	<i>Less than 1 year</i>	<i>Between 1 and 2 years</i>	<i>Between 2 and 5 years</i>	<i>Between 2 and 5 years</i>	<i>Over 5 years</i>
	N\$	NS	NS	NS	N\$
Trade and other receivables	408 268	-	-	-	-

Interest rate risk

The Commission is not exposed to interest rate risk.

As the Commission has no significant interest-bearing assets the Commission's Income and operating cash flows are substantially independent of changes in market interest rates.

Credit risk

Credit risk consists mainly of cash deposits, cash equivalents derivative financial instruments and trade debtors. The Secretary only deposits cash with major banks with high quality credit standing and limits exposure to any one counter-party.

Foreign exchange risk

The Commission is not exposed to foreign exchange risk.

Price risk

The Commission is not exposed to Price risk

NAMIBIAN COMPETITION COMMISSION
ANNUAL FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR ENDED 31 MARCH
DETAILED INCOME STATEMENT

	Note	2014 N\$	2013 N\$
Revenue			
Rendering of Services		7 004 690	4 722 000
Government grants received		18 000 000	19 562 000
	7	25 004 690	24 284 000
Other Income			
Interest received	8	1 249 705	952 749
Operating expenses			
Accommodation & meals		(441 916)	(448 313)
Advertising		(1 977 198)	(1 414 321)
Auditing & accounting fees		-	-
Bank Charges		(44 863)	(39 957)
Cleaning		(43 826)	(25 449)
Board seating fees		(356 349)	(390 383)
Computer expenses		(158 829)	(169 789)
Consulting and professional fees		(1 168 419)	(846 025)
Depreciation, amortisation and impairments		(854 027)	(694 646)
Donations		(46 456)	(56 940)
Loss written off on stolen asset		-	41 430
Employee costs		(13 621 961)	(10 773 531)
Entertainment		(33 210)	(22 805)
Fines and penalties		-	-
Insurance		(99 882)	(81 120)
Lease rental on operating lease		(2 811 053)	(1 867 924)
Legal fees		-	(160 265)
Levies		-	-
Library Materials		(32 883)	(34 767)
Motor vehicle expenses		(42 562)	(43 956)
Postages		(4 196)	(9 969)
Printing and stationery		(468 010)	(378 496)
Repairs and maintenance		(245 410)	(327 926)
Security		(5 450)	(3 616)
Staff relocation		371	(5 101)
Office Consumables		(213 331)	(121 076)
Subscriptions		(197 630)	(207 387)
Subsistence and travelling		(265 741)	(65 040)
Telephone and fax		(463 342)	(430 634)
Training		(2 428 519)	(3 044 081)
Transport Expenses		(680 414)	(618 638)
Water & Electricity		(183 296)	(63 391)
		(26 888 402)	(22 304 113)
Surplus/(Loss) for the year		(634 007)	2 932 636





INCLUSIVITY AND DIVERSITY MANAGEMENT
IS KEY
TO COMMISSION'S ORGANISATIONAL SUCCESS

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