

ANNUAL REPORT 2015-16



Namibian
Competition
Commission



SAFEGUARDING PUBLIC INTEREST IN COMPETITION LAW ENFORCEMENT



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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 Commission 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.



FOREWORD BY MINISTER

“Efficient competition policy is vital in supporting the Commission's efforts to achieve a strong and prosperous Namibia.”

Over the past 6 years, the Commission has developed into a strong institution, through ground-breaking investigations of corporate conduct.

In many jurisdictions, including Namibia, competition law is targeted to maintain and encourage the process of competition to promote efficient use of resources, while protecting the freedom of economic action of various market participants. Thus, competition law is viewed to achieve or preserve other objectives, such as de-centralisation of economic decision-making, preventing abuse of economic power, promoting small businesses, instilling fairness and equity and other public interest values.

Efficient competition policy is vital in supporting the Commission's efforts to achieve a strong and prosperous Namibia. Competition

policy empowers businesses and consumers, and in turn helps the Namibian Government create jobs and realise growth and investment. As the Ministry responsible for promoting growth and development of the economy, through the formulation and implementation of appropriate policies to attract investment, we are committed to doing our utmost to safeguard Namibian citizens' right to enjoy a choice of innovative goods and services, and to enable all players in the Namibian Market to compete on merit.

By ensuring that businesses compete rather than collude, market power is not abused, and efficiencies are passed on to end consumers, competition policy broadens consumer choice, stimulates technological innovation and fosters price competition.

Recently advanced economies have seen a gradual shift away from use of competition laws to promote public interest objectives such as employment promotion. However, in our developing country context, competition law remains vital in this regard.

Although we are continuously informed by the competition experience in other jurisdictions, competition law enforcement in Namibia unavoidably reflects our own realities and preoccupations. Our competition laws are not simply foreign anti-trust legislation with a local flavour. In exercising our mandate, we accept that our priorities of industrialisation, job creation and transformation are critical.

Our experience shows that development does not always

necessarily flows from one single policy fixation but rather that successful societies experiment, try different approaches, and use policies in combination. Government policy frameworks provide the context within which an effective competition policy is pursued. In that vein, in 2004 the government adopted the country's long-term vision 2030 which sets the framework for Namibia's development agenda, objectives and economic targets for the first three decades of the new millennium.

development and job creation. In particular, they support inclusive growth by opening opportunities and resources for small businesses and by protecting employment.

The government is determined to step up efforts towards economic transformation, towards ensuring not only more dynamic growth, but also higher employment, greater equality, and increased opportunities for all citizens. In this endeavour the Namibian Competition Commission is a vital partner.

“

The Competition Commission may need to strengthen its working relationship with other public entities to ensure that its public mandate is more effectively pursued.

”

Vision 2030 focuses on 8 themes; Inequality and Social Welfare; Peace and Political Stability; Human Resources Development and Institutional Capacity Building; Macroeconomic Issues; Population, Health and Development; Namibia's Natural Resources Sector; Knowledge, Information and Technology, and; Factors of the External Environment.

Through our National Development Plans, Government identifies key priority areas that will help achieve the high and sustainable economic growth required for employment creation, poverty reduction and greater income equality.

Development requires a fundamental shift in the structure of the economy if we are to lift our real rate of development, employment, industrial capacity, rural inclusion and economic well-being. This is what we mean by inclusive growth.

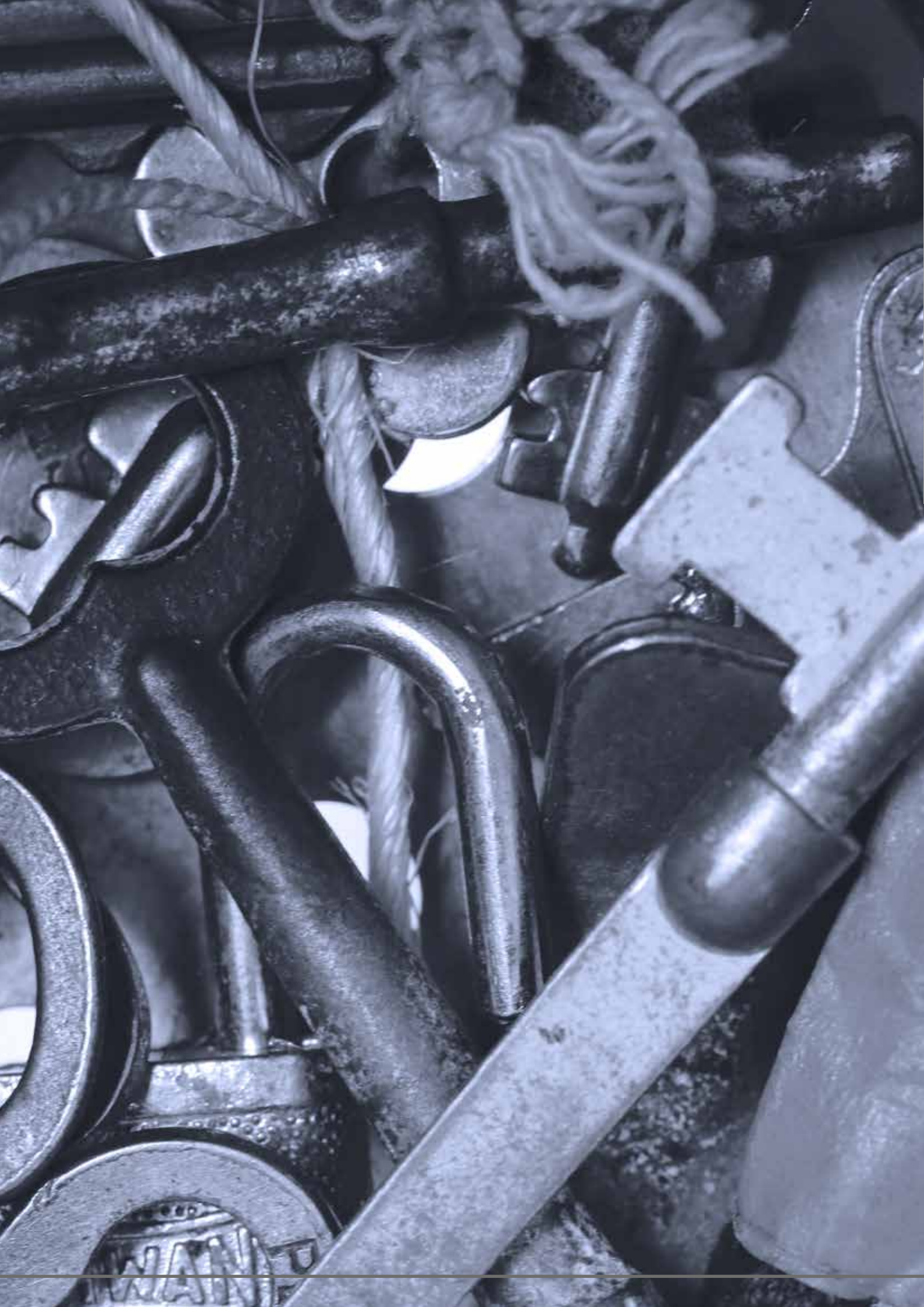
The competition authorities play important roles in this area. They do not stop simply at banning or punishing anti-competitive behaviour, but have gone further to mobilise resources and actions that contribute directly to economic

At the same time, combating poverty and reducing income and inequality feature prominently in our policy framework. Not just to bring about greater social equity, but also as a means of deepening our market and bringing more Namibians into economic activity.

Achieving these objectives means we must speed up the growth of small businesses, bring young entrepreneurs into the economy, strengthen the development of previous disadvantaged people and improve overall competitiveness.



Honourable Immanuel Ngatjizeko, MP
Minister of Industrialisation, Trade and SME Development





CHAIRPERSON'S REMARKS

“ ...competition law provides a clear benchmark and rules for businesses to comply with. ”

I am very pleased to address you in my capacity as the Chairperson of the Namibian Competition Commission and present the 2015/16 Annual Report.

Competition is a much-cherished value in Namibia. Competition drives economic vibrancy, stimulates innovation, creates work opportunities and brings consumer benefits. It is one of the cornerstones of our open economy.

Competition has deep roots in the Namibian markets, but we should not assume that it always came naturally. In some circumstances competition needs to be safeguarded. The introduction of the competition law in Namibia was an important step in this regard; to protect our shared value of competition and to nourish it.

We also must not lose sight of the possibility that competition may mean different things to different stakeholders. Therefore, competition law provides a clear benchmark and rules for businesses to comply with. It is a practical and fact-based legal framework benefiting both businesses and consumers. Studies around the

world consistently demonstrate the positive and significant effects that competition has on productivity and economic growth.

In addition to enforcing the law, the Namibian Competition Commission also has an on-going role in informing the Namibian public and businesses about the benefits of competition to the economy and the need for them to be aware of and comply with the law. Therefore, we have been taking our advocacy role very seriously by engaging with our key stakeholders to understand their concerns and deliver simple and clear messages on the contours of the law through various channels. We will continue our work in this regard.

Our competition regime is crafted in such a way that it plays a significant role in achieving sustainable and inclusive growth and development. Our competition law, like that of any other developing economy, is designed and effectively implemented according to the economic and social circumstances in our country. It is expected to complement other government policies in achieving these goals. Because effective competition is a driver of productivity,

competition law and policy are an essential component of any economic growth strategy. Crucially, competition facilitates greater equality of opportunity by breaking down the barriers to fair competition that often help to protect dominant businesses.

I am a firm believer in the values of competition law and the key role the law will have in ensuring Namibia remains a competitive, dynamic and free market. In time, I am confident that the full benefits of the law and its potential to enhance Namibia's overall economy through ensuring a level-playing field for all will be felt in all aspects of our daily lives.

Dr. Sakeus Akweenda
*Chairperson of the Board of
Commissioners*



CEO's OVERVIEW

“ Whilst our Enforcement Division leads on many aspects of improving competition, every part of the Commission makes a significant contribution and is a key consideration in our day-to-day decision making. ”

The Namibian Competition Commission's objective, to protect and safeguard competition in Namibia, is espoused in the Competition Act No. 2 of 2003. The institutionalisation of the Commission towards the full administration and operationalisation of the Act formally commenced in 2009. This annual report summarises the work we have undertaken to deliver against that objective during the financial year 2015/16.

During the 6 years of our existence, we have used a range of competition tools and interventions, from investigating markets and making policy and rules that improve competition to supporting innovation.

It should also be clear from this report just how deeply our competition objective is now embedded across the organisation. Whilst our Restrictive Business Practice and Mergers and Acquisition Divisions leads on many aspects of improving competition thus attending to anticompetitive concerns

within the Namibian economy, every part of the Commission makes a significant contribution.

As an overarching responsibility on effecting competition governance from the Board of Commissioners, it is been our key consideration in our day to day decision making on competition cases to effect proper, just and fair competitive behaviour on protecting the competition space in the Namibian economy.

The past six years has seen strong analysis of merger and acquisition cases that were all decided within the statutory deadlines provided for in the competition law. During the period under review, 89 mergers and acquisitions were determined during the 2015/2016 financial year, of which the total mergers determined 86 mergers were unconditionally approved and only 3 mergers determined were approved subject to conditions. As a possible sign of effective proper competitive behaviour and compliance, no mergers were prohibited during the period under review.

In the enforcement space, the Commission has seen considerable progress this year, with finalisations of investigations with contraventions, in the glass, agro processing and the health sectors and industries.

The Commission has finalized a number of cases where it found no contravention, and these are in the health, glass, agriculture and trade promotion. The Commission nevertheless, provides recommendations to market players that may improve market transparency in the market. The Commission has also concluded a thorough and comprehensive investigation into anticompetitive practices in the health care sector in Namibia.

The Commission has undertaken analytical and targeted research in some sectors of the economy, to gain an in-depth understanding of how sectors and markets operate. In addition to the previous studies on the retail sector, cement and poultry, the Commission in collaboration

with the World Bank is finalising its study in product market regulation which aimed to identify barriers to the development of competition in the Namibian market, as well as proposing a set of recommendations to eliminate barriers to entry and exit on competition.

We have also been very vigorous on advocacy and stakeholder engagements. One particular achievement in this area which merits mentioning is the Annual Competition Week held every September, which aims to create a venue where competition issues are discussed with stakeholders. This year we had a successful engagement with stakeholders on the topic of competition law compliance.

As provided for in the Competition Act, the Commission has recognised the importance of cooperation with sector regulators to create cohesion on concurrent jurisdictions. Currently, to date the Commission has been proactive in signing and operationalising the memoranda of understanding with Electricity Control Board, Anti-Corruption Commission, Bank of Namibia, Communications Regulatory Authority of Namibia, Namibia Ports Authority and Namibia Financial Institutions Authority.

The 2015/16 financial year thus marked an important milestone when the Commission concluded an MoU with the Competition Commission of South Africa which is aimed to promote and facilitate effective and efficient cooperation in the field of competition law enforcement and policy.

The development of the National Competition Policy is underway, with a final draft Policy approved by the portfolio Ministry. Notably, due to the challenges experienced in enforcement of the competition law over the previous years, the Commission has identified the need to review the Competition Act to bring it in line with international best practice in a manner that is relevant to the national context. The competition Bill was approved by the Board of Commissioners and was submitted

to the Minister of Industrialisation, Trade & SME Development.

This Bill is aimed to increase the scope on Competition enforcement and provides enhanced powers on enforcement, market inquiries, merger regulation and competitive neutrality, amongst others.

Going forward, ensuring Competition compliance, market intelligence, research, stakeholder engagement, competition advocacy and capacity building in areas of competition remained as a priority on the Commission's agenda. The Commission has always taken cognisance of the public interests of our political economy in all spheres of our work on Competition Law and Policy in order to effect a sound, dynamic and vibrant competition regime in Namibia.

The Commission remains dedicated to building on the continuously transformative changes towards the full administration and operationalisation of the Competition Law and Policy and commend positively the good work of the past year due to the sustained and cooperative engagement of our stakeholders, as it has given us a strong foundation to establish and institutionalise the Competition Commission.



Mihe Gaomab II
Chief Executive Officer

BOARD



Mr. Mihe Gaomab II
CEO (ex officio)



Dr. Sakeus Akweenda
Board Chairperson



Ms. Malverene Theron
Member



Mr. Gideon Shilongo
Member



Ms. Teresia Kaulihowa
Member



Mr Nghidinua Daniel
Member

CORPORATE GOVERNANCE

The Board is tasked with overseeing and guiding the affairs of the Competition Commission. The Board engages with management regarding performance, execution and effectiveness to ensure that the strategic objectives of the Commission are met.

The Board is supported by Board sub-committees and ultimately takes responsibility for the Commission's adherence to sound corporate

governance principles and ensures that all decisions are made with reasonable care, skill and diligence. The sub-committees report to the Board on their activities in line with their delegated powers and authorities.

COMPOSITION OF THE BOARD

The Board is made up of five (5) Commissioners who have been appointed in terms of section 5 of the Competition Act (Act No. 2 of 2003), and have a blend of

expertise in the fields of commerce, economics, law, accountancy, financial management and public administration. The Chief Executive Officer of the Commission serves as an ex officio member of the Board.

The Board held six (6) meetings during the period under review. Table 1 below shows the attendance of Board meetings by Commissioners.

Table 1: Board members

Name	Designation	Appointment Date	Term Ending	Number of Meetings Attended
Sakeus Akweenda	Chairperson	11 Feb 2015	10 Feb 2018	6
Malverene Theron	Member	17 Sept 2013	16 Sept 2016	6
Teresia Kaulihowa	Member	11 Feb 2015	10 Feb 2018	6
Nghidinua Daniel	Member	15 Feb 2013	16 Feb 2016	5
Gideon Shilongo	Member	11 Feb 2015	10 Feb 2018	4

Table 2: Board remuneration for the period under review

Name	Dates of Board Meetings & Fees						Retainer Fees
	21/04/15	18/06/15	03/11/15	03/12/15	10/02/16	17/03/16	
Sakeus Akweenda	N\$5,837.20	N\$5,837.20	N\$5,837.20	N\$5,837.20	N\$5,837.20	N/A	N\$51,790
Malverene Theron	N\$3,681.80	N\$3,681.80	N\$3,681.80	N\$3,681.80	N\$3,681.80	N/A	N\$42,306
Teresia Kaulihowa	N\$3,681.80	N\$3,681.80	N\$3,681.80	N\$3,681.80	N\$3,681.80	N/A	N\$42,306
Nghidinua Daniel*	N/A	N/A	X	N/A	N/A	N/A	N/A
Gideon Shilongo	N\$3,681.80	X	N\$3,681.80	N\$3,681.80	X	N\$7,363.60	N\$42,306

*Public servant

BOARD COMMITTEES

The Commission has established three Board Committees in accordance with section 12 of the Competition Act. These Committees,

which consist of Commissioners, 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.

BOARD TECHNICAL COMMITTEE (BTC)

The Board Technical Committee (BTC) is a technical advisory committee acting as the first stage in the Commission's adjudication of all technical cases in respect of Mergers & Acquisitions; Restrictive Business Practices and Economics & Sector Research divisions.

FINANCE, AUDIT AND RISK COMMITTEE (FARC)

The Finance Audit and Risk Committee (FARC) has "front line" governance responsibilities that go beyond the oversight of only financial reporting to also include the oversight of continuous disclosure and corporate reporting. The Committee has powers over all factors and risks that may impact on the Commission, including factors that may predispose management to present a misleading picture, significant judgements and reporting decisions made, any evidence that brings into question previously published information, forward-looking statements or information.

HUMAN RESOURCES COMMITTEE (HRC)

The primary function of the Human Resources Committee (HRC) is to assist the Board in discharging its duty to oversee the establishment of appropriate human resources policies and strategies that provides the Commission with the capability to achieve its short and long term business objectives.

INTERNAL COMMITTEES

EXECUTIVE COMMITTEE (EXCO)

The Commission's Executive Committee (EXCO) is headed by the Chief Executive Officer and comprised of the divisional heads, the Corporate Secretary/Legal Advisor and the Technical Advisor in the Office of the CEO. The EXCO is primarily charged with overseeing the strategic matters and executing management responsibilities at the Commission.

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, all financial and legal requirements. Their responsibility also includes active participation in monitoring the day-to-day operation of the Commission.

INTERNAL TECHNICAL COMMITTEE (ITC)

The Internal Technical Committee (ITC) was established to assist the Office of the Chief Executive Officer in fulfilling its function of making appropriate recommendations to the Board Technical Committee (BTC) and eventually the Board. The ITC is headed by the technical directors on a rotational basis and advises the Chief Executive Officer on matters relating to competition, regulatory and policy-making activities and any other matters requiring his/her decision and or recommendation to the BTC and Board of Commissioners.

The ITC evaluates and interrogates the Commission's technical work emanating from the Mergers & Acquisitions, Restrictive Business Practices and the Economics & Sector Research divisions exogenously and endogenously determined and thereafter advises the Chief Executive Officer.

Executive Committee (ExCo)



Mr. Mihe Gaomab II
CEO



Mr. Gideon //Garoeb
Director Corporate Service



Mr. Vitalis Ndalikokule
Director Mergers and Acquisitions



Ms. Ashley Tijitua
Corporate Secretary and Legal Advisor & Acting Director Restrictive Business Practices



Ms. Bridget Dundee
Technical Advisor Office of the CEO & Acting Director Economic & Sector Research

OFFICE OF THE CEO & SECRETARY TO THE COMMISSION

The Office of the CEO is responsible for ensuring that the Commission maintains sound corporate governance. It plays a critical role as secretariat to the Board and its various sub-committees and serves as a vital link between the Board

and the rest of the Commission. The Office of the CEO continuously scans the environment for opportunities and threats, while at the same time ensuring that the necessary internal adjustments are made to respond to changing

circumstances. It furthermore integrates the strategy implementation and performance monitoring and evaluation processes of the Commission.



Mr. Mihe Gaomab II
CEO



George Hamata
Legal Officer: Governance and Compliance



Ms. Ashley Tjipitua
Corporate Secretary and Legal Advisor & Acting Director Restrictive Business Practices



Ms. Bridget Dundee
Technical Advisor Office of the CEO & Acting Director Economic & Sector Research

Strategic Goals, Outcomes and Targets:

Strategic Goals	Outcomes	Indicators	Targets
To ensure effective enforcement of the Competition Act as a contribution to creating competitive markets in line with Vision 2030	Increased compliance with the provisions of the Competition Act	Percentage of compulsory compliance interventions through exemption conditions (s27), merger conditions (s47[7]), settlements (s40) and court orders (s38) implemented	100%
		Percentage of Section 51 application decisions in favour of the NACC	70%
		Percentage of merger determinations made to prevent substantial lessening of competition in sectors and markets	100%
		Percentage of Section 38 application decisions in favour of the NACC	70%
To expand the scope of competition regulation and strengthen the quality thereof	Competition policy developed and submitted to MITSD	Competition policy submitted to MITSD	1
	Draft Competition Bill submitted to MITSD	Draft Competition Bill submitted to MITSD	1
To enhance competition advocacy towards the fulfillment of sound competition principles and practices	Culture of compliance to the Competition Act established	Number of Voluntary Compliance Programmes implemented	5
		Position Papers produced with policy recommendations	10
To conduct action oriented research on competition in support of evidence-based competition regulation and policy	Established a knowledge-base on competition in the Namibian economy	Impact Assessment Reports produced	2
		Economic Discussion Papers produced	10
		Market studies conducted	3
To develop the Commission as a centre of operational excellence in competition regulation	Established the Commission as a centre of operational excellence in competition regulation	Internship and development programme implemented	Fully Implemented
		Employee job satisfaction	90%
		Quality Management System (QMS) implemented and maintained	QMS Certification

Organisational Business Plan

The measurable objectives of the Commission and the outputs it will deliver over the next five years:

	MEASURABLE OBJECTIVES	OUTPUTS	KEY PERFORMANCE INDICATORS	5-YEAR TARGET
CEOs OFFICE	- To ensure sound corporate governance - To maintain effective and mutually beneficial international relations - To ensure compliance to the Act through advocacy and education. - To recommend investigations and merger determinations to the Board of Commissioners - To complete the review of the Competition Act	Annual Report	Number of Annual Reports produced	5
		Memoranda of Understanding/ Agreements	Number of Memoranda of Understanding/ Agreements concluded	2
		Participated in international competition forums	Number of panel discussions and discussion papers presented (ICN, OECD, UNCTAD, ABBA, others)	5
		Investigation decisions approved and implemented	Implemented decisions in terms of investigations	Aligned to RBP
		Merger decisions approved by the Board	Implemented decisions in terms of merger determinations	Aligned to Mergers and Acquisition
		Settlement agreements approved by the Board	Number of settlement agreements confirmed by the Court	Aligned to RBP
		Proposals on amendments to the Act	Reports produced on amendments to the Act	5
		Stakeholder engagement on review of the Act	Number of workshops and forums held for engagement	5
		Review of the proposed amendments and approvals by the Board	Number of reports presented to the Board	3
		Advocacy and stakeholder engagement	Number of stakeholder consultations on amendment of the Act	1
CORPORATE SERVICES DIVISION	To provide Information, Communication and Technology, Human Resources, Financial Management, Facilities and Administrative Support services that enable the Commission to effectively discharge its mandate	Annual Financial Report produced	Number of Annual Financial Reports approved by the Board	5
		Annual Affirmative Action Report produced	Affirmative Action Report approved by the Board	3
		Skills developed	Planned training activities undertaken	100%
			Effective internship and development (economic analysis and competition law) programme implemented	1
		Consolidated budget submitted	Consolidated budget approved by the Board	5
		Staffing	Vacancies filled within 3 months	100%
		Quality Management System developed and maintained	Quality Management System certified	QMS Certification Maintained
		Administrative support services rendered	Internal customer satisfaction	90%
		Logistical support services rendered	Internal customer satisfaction	90%
		Communication Toolkit Developed	Number of External Newsletters produced and disseminated	20
			Number of Internal Newsletters produced and disseminated	14
			Commission website content kept up to date	100%
			Commission website uptime	95%
			Number of stakeholder workshops, seminars, and outreach programmes conducted	25
			Number of promotional material produced and disseminated	100
			Number of media briefings organised	20
			Number of media statements issued	20
RESTRICTIVE BUSINESS PRACTICES	To investigate restrictive business practices and enforce compliance to the Competition Act	Screening Report produced with recommendation to refer or non-refer	CEO approval of Screening Report recommendation to refer or non-refer	100%
		Investigation Reports produced	Board approval of Investigation Report recommendations	100%
		Exemption Report produced	Board approval of Exemption Report recommendations	100%
		Advisory Opinion issued	Percentage of Advisory Opinions issued within 30 days	90%
			Percentage of complex Advisory Opinions issued within 60 days	90%
		Consent Agreements produced	Approval of Consent Agreements by the Board	100%
		Interim Relief Order report produced	Approval of Interim Relief Order recommendations by the Board	100%
		External Manual developed and reviewed	External guidelines in Manual developed, reviewed and updated	1

MERGERS AND ACQUISITION	To conduct merger review and regulation in a manner that is transparent and predictable	Merger determinations made	- Merger determinations made within the legally required time-frame - Merger determinations published in Government Gazette	100%	
		Advisory Opinions issued	- Percentage of Advisory Opinions issued within 30 days - Percentage of complex Advisory Opinions issued within 60 days	90%	
		Recommendations made in respect of Chapter 4 applications	Board approval of recommendations in respect of Chapter 4 applications	90%	
		Merger conditions monitored and submission of quarterly monitoring reports to Board	Percentage of merger conditions monitored	100%	
		Merger trends and related competition law and policy report produced	Number of reports produced on merger trends and related competition law and policy	20	
		External guidelines developed and reviewed	External guidelines reviewed and updated	Annually	
		- To institute a market inquiry and price monitoring regime to support national competition policy objectives - To produce high quality and timeous economic analysis and advisory reports in support of case investigations and policy development and implementation - To increase awareness of competition law	Market investigations completed	Numbers of market study reports produced	5
			Price surveillance reports completed	Number of price surveillance reports produced	5
	Economic analysis and advisory reports produced		- Number of Position Papers produced - Complex Economic Case Reports produced in priority sectors on request from technical divisions - Number of Impact Assessment Reports produced - Number of Competitiveness Enhancement Schemes - Number of Economic Discussion Papers produced	10	
			100%		
2					
2					
10					
Competition Week hosted		- Concept Note on Competition Week produced - Competition Week conference paper produced - Competition Week Post-mortem report produced	5		
	5				
	5				



RISK MANAGEMENT

During the period under review the auditors facilitated a process with management and as a result thereof, a strategic risk register was compiled. From this, it emerged that the top five (5) significant risks facing the Commission are:

Expertise: The Namibian market does not have the necessary skilled people in competition law. This places a limitation on how the NaCC achieves its objectives. Furthermore, the training budget was reduced from 49% to 35%. This may result in staff not being trained appropriately further increasing the skills gap. This risk is addressed by the internship programme that the Commission currently has. This programme allows tertiary graduates to gain practical exposure in competition matters with an eye on future employment opportunities at the Commission.

Budget Allocation from the Line Ministry:

According to the Ministry of Industrialization, Trade & SME Development, the budget allocated to the NaCC is based on the fact that the NaCC is not an income generating entity. However, the current budget allocation is insufficient for the accomplishment of the NaCC's strategic objectives. This risk is currently being addressed through effective planning of expenditure items and implementation of strict expenditure monitoring measures to ensure that expenditure is in line with the approved budget.

Enforcement of the Competition Act:

The Act in its current form limits the Commission's ability to fulfil its required mandate and ultimately achieve its strategic objectives. As a mitigation measure, proposed amendments to the Act have been drafted for presentation to the Minister of Industrialisation, Trade and SME Development.

Legal Risk: Due to the nature of the business, there are legal risks involved, e.g. litigation costs when a party takes NaCC to court. Court cases require research and preparation and as a result money

and time is lost in the process. To reduce the adverse consequences of this risk, the Commission uses reputable law firms to represent it in court cases and to assist the Commission with legal opinions on challenging competition matters.

Institutional Knowledge and Memory:

Due to high staff turnover and a lack of knowledge management policies and procedures, there is a risk of loss of institutional knowledge and memory.

IT Governance:

The NaCC outsources its Information Technology services to external consultants. The consultants are however not always available in times of need. This causes delays and may result in NaCC being sued if answers are not given to law firms on time. In addition, there is no IT disaster recovery plan and business continuity plan in place. There is a manual record registry in place but due to insufficient storage capacity, this function also has been outsourced. Outsourcing always carries the risk that confidentiality may be compromised in the process. As a control measure, an outsourced IT service provider currently assists the Commission with its IT operational requirements.

Future control measures for the above risks were also determined and captured in the strategic risk register. The Commission's Risk and Compliance Officer is tasked with monitoring the implementation of the future controls and to inform the Finance, Audit and Risk Committee, and the Board through quarterly reports. In its next annual report, the Commission will report on the implementation of the future controls. In addition, the Commission will also report on the status of the Enterprise Risk Management Framework, the Risk Management Policy and a Compliance Policy which are currently in draft form.

RESTRICTIVE BUSINESS PRACTICES





Ms. Ashley Tjipitua
Acting Director: Restrictive Business Practices



Mr. Paulus Hangula,
Senior Economist



Mr. Hitjiua Tjiho
Senior Law Officer



Ms. Cynthia Mukendwa
Economist



Mr. Linelao Nekola
Economist



Ms. Fenni Negonga
Law Officer



Mr. Bernatus Goreseb
Officer Investigations



Ms. Martha Hawanga
Administrative Assistant

RESTRICTIVE BUSINESS PRACTICES

INTRODUCTION

The Restrictive Business Practices (RBP) division's main function is investigating and prosecuting prohibited practices as set out in Chapter 3 of the Competition Act. Chapter 3 deals with two classes of anti-competitive conduct namely restrictive horizontal and vertical agreements, practices and decisions as well as the abuse of a dominant position under Part I and Part II. Part III of Chapter 3 deals with the exemption of certain restrictive practices, intellectual property rights and professional rules.

Complaints in respect of Part I and Part II are either initiated by the Commission or filed by members of the public or private undertakings. The division further provides advisory opinions to the public.

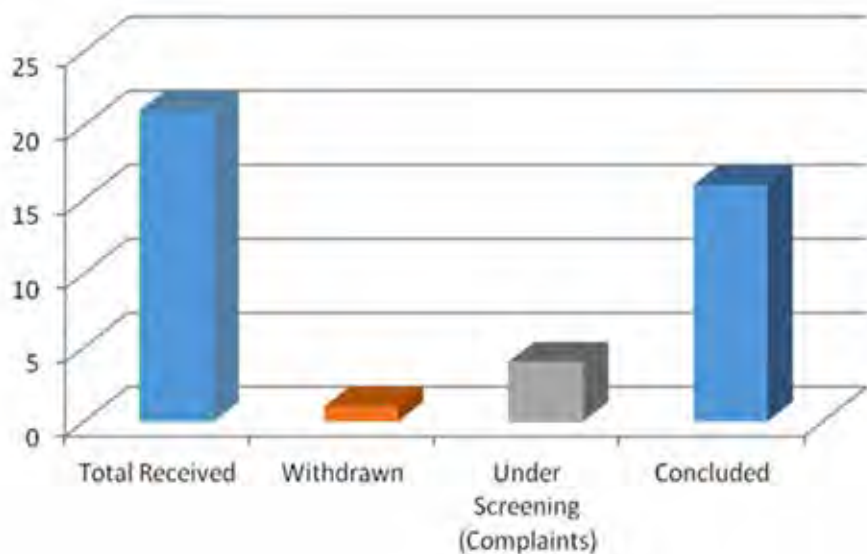
Complaints, exemption applications and requests for advisory opinions by members of the public or private undertakings must be filed in the prescribed manner and form as per the 2016 Enforcement Guidelines published on the Commission's website.

When considering and assessing matters, the Commission considers the potential harm that may be caused to the public as a result of relevant misconduct. This consideration helps enable the Commission to end or mitigate such harmful behaviour. Furthermore, when assessing complaints, exemption applications and compiling advisory opinions, the Commission looks at public interest considerations such as the need to ensure competitive prices and product choices. The Commission also ensures that all undertakings have an opportunity to participate equally in the economy.

NEW SCREENINGS AND ADVISORY OPINIONS

During the 2015/2016 financial period, a total of 21 cases including advisory opinions and exemption

Figure 1: Screenings and advisory opinions handled



applications were handled by the Commission. These consist of eleven complaints and ten advisory opinions. Four of the complaints were carried over from the previous financial year and were completed during the period under review.

Only four complaints are currently being screened, while one was withdrawn after the matter was resolved between the parties. Six complaints have been concluded with the Commission deciding not to investigate, having found no possible contraventions.

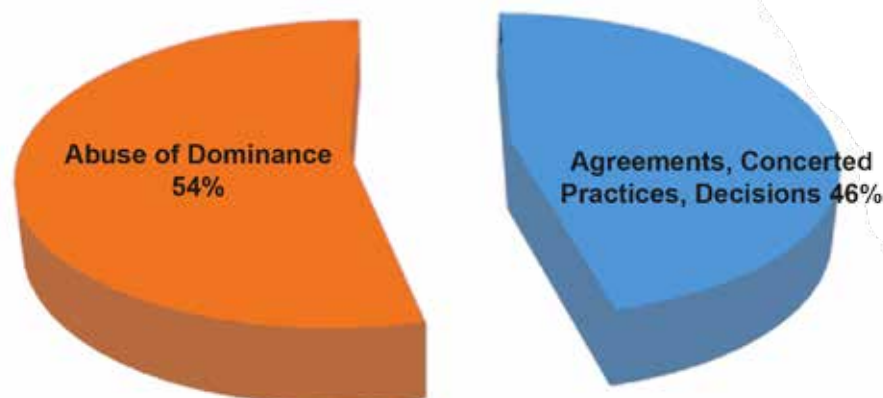
In terms of the cases screened four out of a total ten cases concerned section 23 (agreements and

concerted practices), while the remaining six involved allegations of abuse of dominance in terms of section 26 (abuse of dominance) of the Competition Act.

INVESTIGATIONS CONDUCTED

During the period under review the Commission has handled six investigations. Four have been finalised and the Secretariat has found contraventions and informed all affected parties of its proposed decision. In two of the finalised investigations, the Commission awaits representations from affected parties. Two investigations will see the Commission institute Court proceedings as per section

Figure 2: Percentage of Screenings



38 of the Act, whilst the remaining two of the total investigations are close to finalisation.

Of the investigations conducted, three involved Section 23

INVESTIGATIONS AND SCREENING PER INDUSTRY

As per figure 5, the Commission has conducted and is busy conducting investigations in the Agriculture,

The largest percentage of screenings and investigations conducted during the period under review are in the health sector (23%), followed by the Agricultural sector (14%), Wholesale and retail trade, repair of motor vehicles and motorcycles, transport and storage, financial intermediaries and ICT/ Telecommunication follow with 9% each.

Figure 3: Investigations Handled

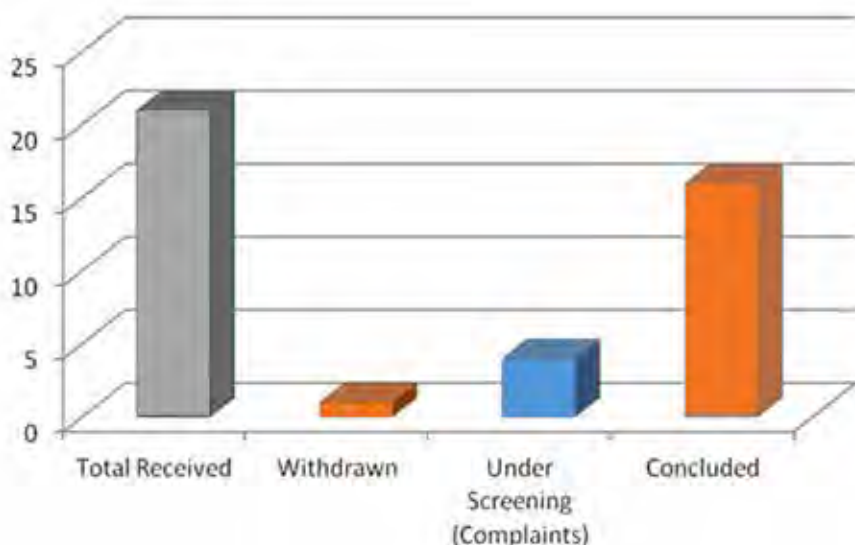


Figure 4: Percentage of Type of Contraventions

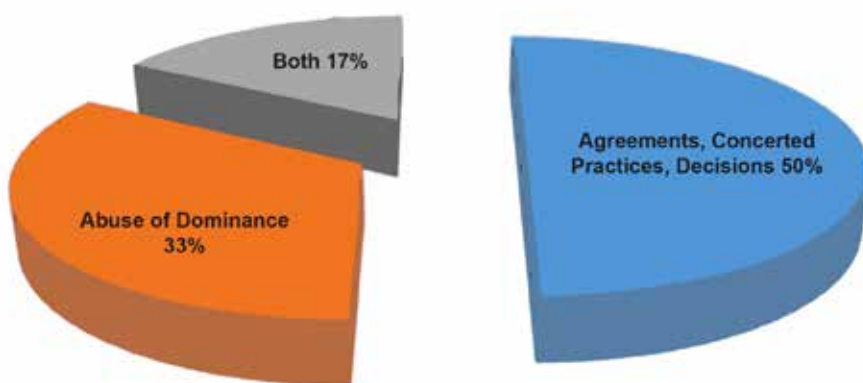


Figure 5: Percentage of Investigations and Screenings per Industry



contraventions, whilst two were Section 26 cases. One investigation concerned both section 23 and section 26 contraventions.

Wholesale and Retail, Construction, Manufacturing, Online Media, Mining and Quarrying, Health and Financial Intermediaries industries.

EXEMPTION APPLICATIONS

During the period under review, the Commission handled only one exemption application which was carried over from previous financial years. The exemption application was considered and finalised towards the end of the 2015 calendar year and was published in the Government Gazette of 23 December 2015. The Commission's exemption decision takes effect on 1st July 2016, to allow the applicant sufficient time to bring its operations in compliance with the Commission's exemption decision.

LITIGATION MATTERS

Namibian Association of Medical Aid Funds and Others v The Namibian Competition Commission and Another:

On 17 March 2016, in the case Namibian Association of Medical Aid Funds and Others v The Namibian Competition Commission and Another, the High Court of Namibia helped create a new era of competition law jurisprudence when the court delivered judgment on the first restrictive business practice case that had been argued before the High Court of Namibia.

Background

An investigation by the Commission had revealed that the Namibian Association of Medical Aid Funds ("NAMAF") and its members (the medical aid funds) participated in a process for the determination and annual review of benchmark tariffs. These tariffs are agreed by members and adopted and published by NAMAF as recommended tariffs or prices for medical products and services provided to

consumers and patients. These tariffs are then applied by the Funds in interactions with medical service providers as the rate at which products and services would be reimbursed or paid. The Commission thus concluded that NAMAFA and its members contravened section 23(1) read with sections 23(2) (a) and section 23 (3) (a) of the Act.

Court Application

The Commission decided to institute proceedings in the High Court to have appropriate remedies determined and to bring the conduct of NAMAFA and the Funds to an end. In particular, the following relief was sought;

- That NAMAFA and its members have contravened section 23 (1), read with sections 23(2)(a) and 23 (3)(a) of the Competition Act and ordering that they cease the conduct in question;
- Interdicting NAMAFA from publishing tariffs (whether as guidelines, recommendations or otherwise) in a manner that infringes the Competition Act;
- Interdicting the members from participating or engaging in any process whereby such tariffs are determined, recommended or implemented in a manner that infringes the Competition Act;
- However, before the Commission could institute proceedings in court, NAMAFA and its members instituted proceedings in court seeking an order that NAMAFA and its members are not subject to the jurisdiction of the Commission or the Act. The Commission opposed this application. NAMAFA's application was argued in the High Court on 26 November 2016.

The High Court Judgment

The High Court, in its judgment delivered by the Honourable Collins Parker, AJ dismissed NAMAFA and the medical aid fund's application and agreed with the Commission's arguments by ruling that NAMAFA and medical aid funds are subject to the jurisdiction of the Competition Act for the following reasons:

- NAMAFA and the medical aid funds do not perform a 'non-commercial socio-economic function' as envisaged in terms of section 3(1) (b) of the Competition Act;
- Medical aid funds operate for gain or reward as envisaged in terms of section 1 of the Competition Act and that medical aid funds are undertakings as envisaged in terms of the Competition Act;
- NAMAFA is an association of medical aid funds and thus qualifies as an "association of undertakings" within the meaning of section 23 of the Competition Act; and that
- The setting of benchmark tariffs by NAMAFA is not authorised under the Medical Aid Funds Act. Accordingly, the setting of benchmark tariffs is not excluded from the jurisdiction of the Competition Act in terms of section 3(3) of the Competition Act.

Following this judgment, the Commission intends to now file its application interdicting NAMAFA and the Funds from engaging in the unlawful conduct and to seek further appropriate redress mechanisms.

MAJOR POLICY INITIATIVES

Restrictive Business Practices Internal Manual

The Commission developed and finalised its framework manual to guide the Restrictive Business Practices Division in the handling of its cases. The manual serves as a monitoring tool on the progress of cases as well as an assessment tool for screening and investigation reports. It also serves as a guiding tool to the technical staff within the division on their day-to-day activities. Finally, it is an imperative tool in the achievement of the Commission's strategic objectives over the next five years.

The Commission, in January 2016, developed its enforcement guidelines which will be published in the 2016/2017 financial year. The guidelines set out the framework in

which the Restrictive Business Practices Division of the NaCC deals with the enforcement of Chapter 3 of the Act and comprises of three primary sections, namely: Restrictive Business Practices, Investigations and Exemption Applications. Lastly, the guidelines are aimed at informing external stakeholders about the Namibian Competition Commission's process in the enforcement of Chapter 3 of the Namibian Competition Act and they serve as an advocacy tool.

Media Screenings

As part of its role in addressing potential anti-competitive conduct within different sectors of the Namibian economy, the Restrictive Business Practices Division has undertaken to monitor media reports, mainly print and online media reports for allegations of potential anti-competitive conduct which constitute as violations of Chapter 3 of the Competition Act. Media screenings are part of an effort by the Restrictive Business Practices Division to be proactive in helping to identify and address potential anti-competitive conduct which constitutes a violation of Chapter 3 of the Competition Act. Media reports may provide a useful source for verifying complaints. Conversely, they may alert the Commission to the existence of anti-competitive conduct within a particular industry. During the period under review, the division in particular monitored media reports on the pharmaceutical industry.

Pharmaceutical industry

The Restrictive Businesses Practices Division carried out a screening after the publication of a media report, that alleged that small distributors in the pharmaceutical industry are prejudiced by new licensing guidelines or requirements. The small distributors complained that these guidelines were unfair and threaten their existence. According to the report, the new guidelines were designed to only benefit bigger operators, able to meet the requirements and would force the smaller operators out of the market. The media screening assessment found that the guidelines appear to be reasonable and in conformity

with the World Health Organization (WHO) guidelines. No party has thus far been able to indicate how the guidelines might potentially infringe the Competition Act.

PLANNED ACTIVITIES FOR 2016/2017

Fine Calculation Model

The division is in the process of developing a model to be used in calculating and setting pecuniary penalties for contraventions. The model will be used to calculate pecuniary penalties, considering the relevant matters concerning competition contravention as per section 53 (3) of the Act. Upon developing the model, the Commission will advance guidelines detailing the methodology to be used by the Commission when setting an appropriate pecuniary penalty.

THE INTRODUCTION OF CORPORATE LENIENCY POLICY (CLP)

The Commission is currently working on the introduction of a Corporate Leniency Policy (CLP). The Commission seeks to introduce a CLP to prescribe the procedure for the granting of leniency to participants in cartel activity. CLPs have internationally been used by competition authorities to provide a framework to enable participants in cartel activity to collaborate with competition authorities in helping to bring an end to the cartel. Cartels are very secretive in nature and hence are difficult to detect and investigate. Further, the fear of prosecution often deters informants or participants in cartels from collaborating with competition authorities that investigate cartel activity.

In terms of a CLP, entities involved in a cartel activity can approach the Commission and self-report and hand over evidence of cartel activity and the Commission in turn offers them total immunity, or a reduction of the penalty, which would have otherwise been imposed on them for having contravened the Competition Act. To obtain immunity or a reduction

in penalty, an entity which participated in a cartel must be the first one to inform the Commission of an undetected cartel by providing sufficient information to allow the Commission to launch an investigation and to prosecute.

Self-reporting because of a CLP not only helps to pierce the cloak of secrecy in which cartels operate, but also helps to obtain insider evidence of the cartel infringement. The leniency policy also has a deterrent effect on cartel formation and destabilises the operation of existing cartels as it sows distrust and suspicion among cartel members. In addition to helping improve the detection and enforcement of cartel activity, the introduction of the CLP in Namibia can help improve the Commission's investigation processes by shortening the time spent on concluding cartel investigations. Thus, CLP helps to free up the Commission's time and resources for more complex investigations.



PROMINENT INVESTIGATIONS FINALIZED

Case name: Petrus Andreas Muller-Carsnamibia// Namcars (Pty) Ltd ("Namcars")

Case number: 2013MAR0003COMP

Type of Infringement: Abuse of a Dominant Position

Industry: Online Media

In May 2015, the Commission completed its investigation with a proposed decision that section 26 (2) (b) of the Act has been infringed by Namcars. The Commission's investigation found that from 2012, Namcars started implementing an exclusive policy that prohibits its customers from dealing with its competitors in the market of the provision of online advertising on behalf of used car dealers in Namibia. Having completed its investigation, in accordance with section 36 (1) of the Act, the Commission issued a notice of its proposed decision (Form 6) to Namcars and afforded it an opportunity to make any representations regarding the Commission's proposed decision.

On 24 June 2015, Namcars approached the Commission emphasising that it wished to settle the matter amicably and avoid costly litigations. The Commission developed the terms of settlement and set up a meeting to discuss same. However, Namcars later indicated to the Commission that it no longer wished to settle the matter.

On 24 November 2015, the Commission afforded Namcars final opportunity to resolve the matter amicably, which Namcars never responded to.

The Commission has since made a final determination on this matter concluding that the Respondent



has contravened the Act and will proceed to Court as per section 38 of the Act.

Type of Infringement: Restrictive Agreement and Abuse of a Dominant Position

Industry: Health

In September 2015 the Commission completed its investigation and found that section 23 (1), read together with section 23 (2) (b) and 23 (3) (e), as well as section 26 (1) read together with section 26 (2) (b) of the Act, has been infringed by several respondents in the Emergency Medical Rescue Service subsector.

The conduct involved exclusive vertical agreements signed between the respondents. Vertical agreements are kind of loose vertical mergers of the businesses without creating a single legal entity. These are agreements between firms that operate at different levels of the market and that are likely to be harmful to competition, especially where one or both parties to the agreement possesses significant market power. These agreements, like any other exclusive agreements, prevent equally efficient competitors from

participating fairly in the market. Furthermore, they diminish consumer choice as other competitors are unable to offer their goods or services to the market.

In November 2015, the Commission issued a notice of its proposed decision and invited the respondents to make a representation. Written representations were received from the respondents between December 2015 and February 2016.

The Commission will assess the representations as received and decide in due course on the appropriate way forward.



EXEMPTION APPLICATIONS

Type of exemption: Professional Rules

Industry: Legal

Law Society Exemption Application

During the past financial year, the Commission finalised its first exemption application by a professional association. The association sought its rules exempted from the Competition Act.

The Law Society of Namibia ("the LSN"), a juristic body established in terms of section 40 of the Legal Practitioners Act, Act 15 of 1995 had made an application for exemption to the Commission in terms of section 31 of the Act. The LSN qualifies as a professional association as envisaged in terms of section 31(7) (e) of the Competition Act. The LSN sought an exemption from the Competition Act for its rules on professional fees; reserved work; organisational forms and multi-disciplinary practices; advertising, marketing and touting.

The Relevant Legislative Framework

Section 31(1) of the Competition Act provides that a professional association whose rules contain a restriction that has the effect of preventing or substantially lessening

competition in a market may apply for an exemption in terms of section 31(2) of the Competition Act. Section 31(2) of the Competition Act empowers the Commission to exempt all or part of the rules of a professional association from the provisions of Part I of Chapter 3 of the Competition Act for a specified period if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of preventing or substantially lessening competition in a market, is reasonably required to maintain professional standards or the ordinary function of the profession.

The Commission's Exemption Decision

The LSN Rules on professional fees and the Commission's decision thereto:

The LSN Rules on professional fees entail prescriptions on what a legal practitioner may charge for services rendered to a client. Rules on professional fees may include; prescriptions on the mandatory maximum fees or minimum fees, recommended fees and the charging of contingency fees by legal practitioners.

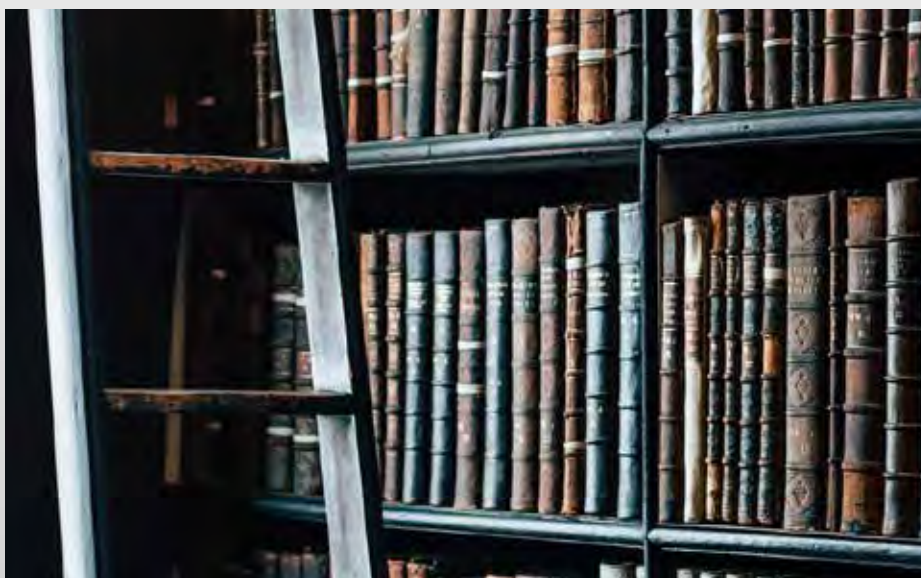
After having considered the LSN

application, the Commission exempted some of the LSN rules on professional fees such as the rules prohibiting legal practitioners from claiming costs from a debtor who is not under a legal obligation to pay such costs and the prohibition on legal practitioners seeking to recover or charge a fee which is unreasonably high considering the circumstances of the matter. LSN rules such as the abovementioned were exempted on the grounds that they were necessary for the maintenance of professional standards and the ordinary functioning of the legal profession, and/or the protection of the public.

The Commission however declined to grant exemption in respect of some of the LSN rules, such as the rules prohibiting legal practitioners from charging clients contingency fees. The Commission found that the equating of agreeing to contingency fees to unprofessional conduct is not reasonably required for the maintenance of professional standards or the ordinary function of the profession. In addition, the Commission also found that the tariff guidelines developed by the LSN are not supported by internationally applied norms and are not reasonably required to maintain professional standards and the ordinary function of the profession. The development of guidelines is an instance of price fixing which is not specifically authorised.

The LSN Rules on reserved work and the Commission's decision thereto:

The LSN Rules on reserved work entail the reserving of certain titles to certain persons and the placing of restrictions on the category of persons who may perform certain legal work, such as the drafting of and authentication of certain legal documents.





The LSN Rules on reserved work include rules such as:

- The prohibition of legal practitioners from allowing a legal practitioner who is not exclusively employed by a law firm to hold himself or herself as an associate of that firm; and
- The prohibition on assisting, allowing or enabling an unqualified person to receive remuneration for preparing documents or the performance of work which only a legal practitioner is qualified to perform.

The Commission found that the above-mentioned LSN Rules on reserved work were specifically authorised by the Legal Practitioners Act and should therefore be exempted.

The Commission however declined to grant an exemption in respect of the LSN Rule which requires that a legal practitioner can only hold the designation of a "consultant" if such a legal practitioner has been a legal practitioner for a period of ten years. It is the Commission's view that this rule is not necessary for the maintenance of professional standards and should therefore not be exempted.

The LSN Rules on Organisational Forms and the Commission's Decision thereto:

The Commission granted exemption to the LSN in respect of the LSN Rules which prohibit against carrying on a practice that is not under the direct and personal supervision of a duly qualified legal practitioner. The Commission understands that this rule is aimed at ensuring that law firms that have more than one office in Namibia are required to have a duly and qualified legal practitioner running that office. The rule is therefore necessary for the maintenance of professional

standards and ordinary function of the profession and should therefore be exempted.

The LSN Rules also prohibit legal practitioners from acting on instructions of any organization or person, not being a legal practitioner, or an assessor acting for a registered insurance company, whose business or part of whose business is to make, support or prosecute claims resulting from death or personal injury or who solicits instructions to make, support or prosecute any such claim in respect thereof, unless the relationship is properly a relationship of legal practitioner and client and instructions are thereafter received directly from the client, who bears the practitioner's fees and the practitioner's independent professional judgment is exercised on behalf of such client. The Commission found this rule to be reasonably required to maintain professional standards since the rule tries to curb abuses and exploitative practices that may arise in claims arising from death or personal injury.

The Commission also exempted the LSN Rule which prohibits legal practitioners from entering a contract or arrangement in terms of which the practitioner is placed under the control of an unqualified person. This rule is arguably required for the maintenance of professional standards and the ordinary function of the profession.

However, the Commission declined to grant exemption to the LSN Rules which prohibit legal practitioners from sharing offices or practising with a person other than a legal practitioner and the prohibition of a legal practitioner from entering a partnership or a commission or allowance-sharing arrangement with a non-legal practitioner. Such rules are not reasonably required for the maintenance of professional

standards or the ordinary function of the profession.

The LSN Rules on Advertising and Marketing and the Commission's Decision thereto:

The LSN Rules require that a legal practitioner who publicises the basis of his or her professional charges must be clear and state the services that will be included (including whether disbursements or taxes are included). Such publicity must also indicate any circumstances which would alter the basis of the charges. The Commission considers this rule to be reasonably required for maintaining professional standards. The rule was thus exempted.

After having considered the LSN application, the Commission found that the LSN requirement that a firm may publicise that it undertakes a particular type of work only if it is qualified and able to do such work, is not necessary for the maintenance of professional standards and should therefore not be exempted. Legal practitioners practicing in Namibia are generally trained to be able to apply their skills to diverse areas of law and in a small market such as that of Namibia, specialization is not a key focus. Furthermore, this rule is generally very broad. It would achieve its purpose without unnecessary anti-competitive effects with a simple rule that allows for any restrictions on advertising that conform with the general advertising standards, in that the advertisement is truthful and not misleading to the public.

The Commission's Stance on Other LSN Rules:

- The requirement that a legal practitioner may not state publicly that he will undertake specific kinds of work for a specific charge
- The prohibition on legal practitioners publicly making

comparisons with, or criticizing, other firms, or claiming to be superior to the service of other practitioners and the inclusion of statements about the practitioner's success rate; and

- The requirement that marketing brochures, internet and websites may not contain any misleading information, vulgar or sensational material likely to bring the profession into disrepute, may not imply superiority over other firms and may not contain testimonials or endorsements.

The Commission's stance is that these rules were not necessary for the maintenance of professional standards and should therefore not be exempted. These rules were too broadly phrased and the restrictions in its current form may hinder purposeful advertising through which existing and prospective clients are provided with valuable information which helps them to choose among competing legal practitioners. Through increasing available information, advertising can contribute positively to competition, client choice and access to legal services. The above-mentioned can be more narrowly tailored with a simple requirement that the advertisement is truthful and not misleading to the public.

The LSN Rules on Touting and the Commission's Decision thereto:

The LSN Rules on touting include a prohibition on legal practitioners touting by soliciting custom or work by direct and indirect approach, making unsolicited visits, telephone calls or sending letters or printed material with the view of establishing a legal practitioner/client relationship. The Commission concluded that these rules were not necessary for the maintenance of professional standards and should therefore not be exempted. The definition of touting or what amounts to touting in these rules is wide. As a result, legal practitioners may be reluctant to advertise or look for business legitimately due to the fear that they will be accused of touting. International trends show that the definition or conduct that amounts to touting has in most jurisdictions been narrowed.

The Commission also refused to accept the LSN Rules prohibiting legal practitioners from permitting, encouraging or conniving with another person to solicit custom or work, or entering an arrangement with any person, whether an employee or not, to introduce clients to the legal practitioner. These rules are not specifically authorized and should therefore not be exempted.

The Commission's position as highlighted above, becomes effective on 1 July 2016. Therefore, the LSN must by 1 July 2016 have

aligned its rules in accordance with the exemption decision that was made by the Commission. Those rules in respect of which an exemption was not granted will have to be either amended or abolished and those rules which were too broadly worded will have to be more narrowly tailored to comply with the Commission's decision.



ECONOMICS AND SECTOR RESEARCH





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The industry survey uncovered that barriers to entry to the automotive industry are quite high, including significant capital expenditure to establish a dealership and workshops, obtaining franchise agreements to distribute/sell new cars, skilled labour which is in short supply, and high cost pressures, which include raw materials, high electricity costs, and the cost of training employees. Due to a few number of market players, more specifically in the aftercare market (panel beaters with OEM approvals

and insurance), the automotive industry is fairly transparent, creating a conducive environment for collusion, therefore it was recommended that the Commission put in place a strong regime to increase compliance with competition law in the industry.

The study once approved by the Board of Commissioners, will be shared with the Ministry for policy development.

World Bank Study on Product Market Regulations and Anti-trust Framework

The World Bank studies on product regulation were part of the World Bank technical assistance to the NaCC, which was aimed towards identifying barriers to the development of competition in Namibian markets; propose recommendations to eliminate barriers to competition and anticompetitive product market regulation derived from restrictive government policies; and strengthen the antitrust framework and enforcement capacity of the NaCC.

The report identified the following as main barriers to competition in the product market regulations:

- Competition conditions in many Namibian markets appear to be constrained. For instance, production and processing of beer, cement, dairy, meat processing, milling (including animal feeds), and poultry are each dominated by single firms.
- State involvement in many economic activities. State-owned enterprises (SOEs) and government participation play a dominant role in several markets and sectors in Namibia. The government's shareholding spreads to almost all Namibian network industries, including market segments that tend to be served by the private sector. The state involvement in the economy needs to be neutral to competition.
- The Namibian Government also provides support measures, but clear criteria for minimizing competition distortions associated with government intervention are not yet in place. State support measures need to be controlled

to limit the negative effects on competition and market conditions, and to avoid providing preferential treatment to certain firms over others. Currently, specific criteria for monitoring the effects of the state support measures on competition conditions seem to be absent in Namibia.

- While some sectors have independent regulators, line ministries remain involved in regulation of various industries, having the authority to overturn regulators' decisions, thus limiting predictability and transparency for market operators. Decision-making processes, therefore, may limit transparency on the rules of the game for incumbent firms and potential new market entrants.
- Regulations of the legal professional body set "recommended" minimum and maximum prices for all services provided by lawyers. The government regulations set binding minimum prices for engineers and binding minimum and maximum prices for architects, which may influence increasing cost of service to the end clients. There is a consensus that self-regulation and state regulation of professions have the potential for creating anti-competitive effects that do not benefit or protect consumers.
- Namibia also imposes some other limitations in professional services market. There is a rule of prohibition for sharing offices and facilities with other professions for legal services.
- There are barriers to entrepreneurship trade and investment. Namibia may improve the administrative burdens for firms in terms of ease of business registration. In the air transport sector, frequency restrictions in the existing Bilateral Air Service Agreements (BASA) limit the provision of certain types of air transport services. In the road transport, the implementation of some regulations affects competition conditions. Some legal restrictions exist on the sale of Government shares in the reinsurance sector.
- Barriers to Foreign Direct

Investment (FDI) reflect legal restrictions on foreign acquisition of equity in companies in the infrastructure sectors and FDI limitations in the legal services sector. Namibia has the right to impose restrictions against foreign investors, but the government allows foreign participation in most sectors. Apart from strategic sectors, foreign ownership limitations in key infrastructure sectors exist, reducing the possibility of new entry. In addition, there are some restrictions for foreign legal practitioners.

- The current regulatory framework for public procurement in Namibia does not provide the necessary elements to ensure fair competition during the tendering process. The granting of many exemptions from public tenders and the lack of clear and transparent procedures to grant such exemptions are some of the main implementation problems of the 1996 Tender Board Act. While the proposed Procurement Bill has considerable merit, it fails to include some of the core provisions to ensure pro-competitive tenders. Enhanced cooperation between the Tender Board/future public procurement agencies and the Namibian Competition Commission (NaCC) could have a considerably positive effect on the Namibian economy.
- Approval of Infant industry protection (IIP) in form of quantitative restrictions or high customs duties in certain sectors, which are dominated by single firms (Cement Poultry, Dairy).

Based on the findings, the study recommends that product regulation requires sustained reforms aimed to achieve the following:

1. Tackle restrictive regulation in the infrastructure sectors and professional services to create more competitive conditions, with positive effects for downstream markets.
2. Streamline burdensome start-up and other procedures for businesses to facilitate easy market entry
3. Evaluate restrictions on

foreign investors vis-à-vis the domestic ones as well as among domestic investors in sectors where such regulatory restrictions create an unlevel playing field and may affect market outcomes and consumers.

4. Review the economic outcomes of state involvement in markets and ensuring competitive neutrality among public and private operators; this will also promote a more effective use of public funds to priority development policy goals.
5. As part of the competition policy framework, set up criteria for granting state support to minimise distortions to competition.
6. Reduce exemptions to competitive public tendering through a well-developed public procurement regulatory framework to enhance public resource savings and to reduce room for anticompetitive practices.
7. Review the IIP effects and focus on the long-term competitive conditions in the IIP-protected sectors.

The study also reviewed the Namibian competition law and identified areas which strengthen the enforcement of competition law and consequent impact to open markets to more firms to compete and to enhance productivity growth.

ANNUAL COMPETITION WEEK

The ESR spearheaded the Commission's 3rd Annual Competition week, an advocacy platform aimed at sensitizing businesses, consumers and all the relevant stakeholders on the importance of competition law to both businesses and economy. The year's event, titled Competition law, Policy and SMEs was aimed at highlighting the importance of competition law to SMEs, challenges facing SMEs and their potential to grow as far as competition law and policy is concerned. Like past events, the activities for the week included a workshop, talk shows and interviews on radio and television, a student lecture and an

essay competition for students of Law and Economics at the Polytechnic and University of Namibia.

The workshop on Competition Law, Policy and SMEs brought together over 60 participants from policy organizations (MITSD and NaCC), SMEs Associations, SME players in different sectors, as well as representatives from private organizations. Among others, the main outcome of the workshop was deliberation on the challenges facing SMEs including issues pertaining to economics of scale, access to funding, access to affordable work space, access to markets, shortages of skilled labour, cost of doing business, bureaucracy, statutory obligations, tax regime and levies/fees. Considering all the challenges faced by SMEs as compared to their peers, most SME players pointed out that government should consider protecting SMEs from foreign competition. Considering Namibia being a signatory to the World Trade Organization (WTO) and other trade agreements, the issue on whether competition and protectionism can co-exist was discussed. The majority of participants argued that competition and protectionism can co-exist and should be considered as cushion for SMEs against competition.

POLICY INITIATIVES

Development of the National Competition Policy (NCP)

The NCP is a prerequisite for a stronger and more effective competition regime. In that quest, the ESRD drafted the NCP which was then submitted to the MTI for review and finalisation. Given the nature and historical pattern of the Namibian economy, the NCP draft was tailormade to suit the Namibian context.

The following pertinent issues manifested themselves in the design of this policy:

a) How should competition policy be applied in Namibia, given the need to:

- maintain incentives to invest (and to generate, import or disseminate technology) for both local and foreign firms and;
- preserve efficiency arising from economies of scale and scope, while avoiding excess capacity and waste in small economies with limited resources?

b) How much can competition policy contribute to the urgent problem of maintaining Namibian competitiveness in national and international markets – or conversely, might its application reduce competitiveness?

c) What is the relevance of merger control in Namibia?

The draft NCP is complete and awaits approval from the Minister of Industrialization Trade and SME Development.



MERGERS AND ACQUISITIONS





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MERGERS AND ACQUISITIONS

INTRODUCTION

The main function of the Commission's Mergers and Acquisitions Division is the enforcement of the provisions of Chapter 4 of the Act. 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 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; result in any party acquiring or strengthening a dominant position in a market; and whether a merger can or cannot be justified on public interest grounds.

According to the revised Merger Threshold Government Notice 307 of 21 December 2015, a merger is notifiable to the Commission if:

- any of the combined values (i.e. any combination of the assets and turnovers of the undertakings involved) is more than N\$30 million and, in addition thereto,
- either the assets or the turnover of the transferred undertaking is more than N\$15 million.

The Commission may however require parties to a merger who do not meet the thresholds to notify the Commission if such merger is likely to raise any competition or public interest concerns.

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

MERGER ACTIVITIES

In total, eighty-nine (89) merger transactions were notified to the Commission during the 2015/2016 financial year. This represents a 5% increase in merger transaction notifications from the previous financial year (2014/2015), when 85 merger transactions were notified.

During the period under review, the Commission investigated and determined 89 mergers. Table 1 below illustrates the number of mergers notified and determined from 2013/2014 to 2015/2016 financial years. Mergers determined in 2014/2015 increased by 86% compared to 2013/2014, while those determined during 2015/2016 financial year reduced by 2% compared to 2014/2015.

Table 1: Mergers notified and determined

Financial Year	Notified	Determined
2013/2014	58	49
2014/2015	85	91
2015/2016	89	89

Figure 1 (below) shows that out of 89 mergers determined three (3%) cases were approved with conditions whilst 86 (97%) were approved without conditions. No mergers were prohibited during the period under review.

Merger Types

Figure 2 (below) shows the type of mergers that were investigated and adjudicated by the Commission. Of the 89 mergers determined 47% were horizontal, 48% were conglomerate; 4% were vertical and 1% were a combination of horizontal, vertical and conglomerate mergers.

Figure 1: Merger Determinations

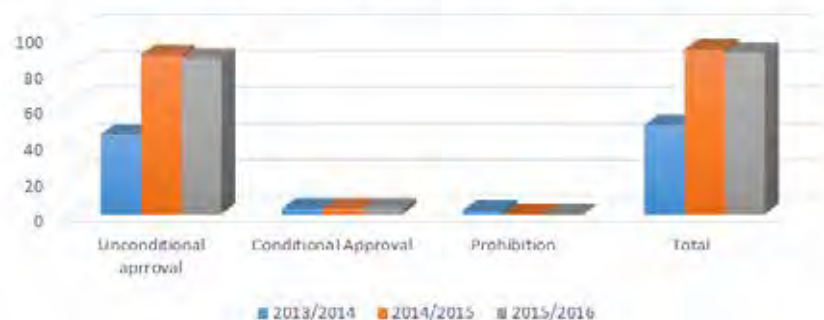
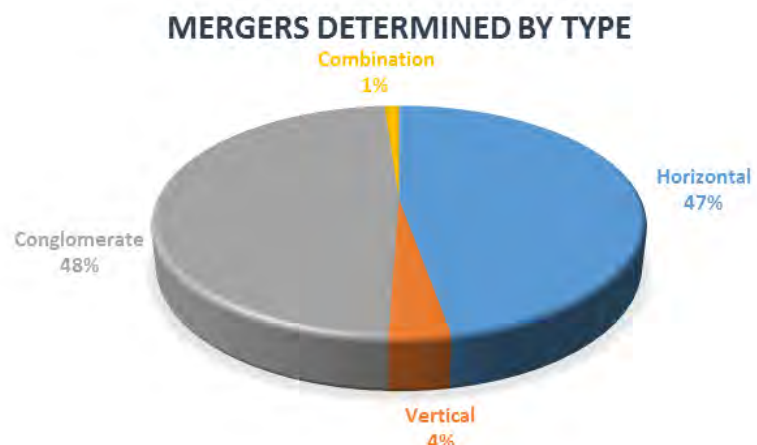


Figure 2: Merger Types



Mergers by Sector

Figure 3 (below) illustrates the various sectors of the economy according to which mergers determined by the Commission were categorised. Most mergers determined were in the real estate sector. The real estate sector accounted for 33% of total mergers determined, followed by wholesale and retail trade with 13% and

manufacturing with 12%. This trend seems to be consistent with the merger activities from the previous financial year in terms of sectors activity.

Ownership

Of the 89 mergers determined, 62% of the target undertakings were Namibian owned whilst 36% were foreign owned. Similarly, 51% of the

acquiring undertakings were Namibian owned and 43% foreign owned. In addition to the above, jointly Namibian and foreign owned undertakings constituted 7% of the acquiring undertakings and 2% of the target undertakings. Figure 4 below illustrates the ownership patterns regarding both target and acquiring undertakings during the period under review.

Figure 3: Merger Decisions Per Sector



Figure 4: Ownership

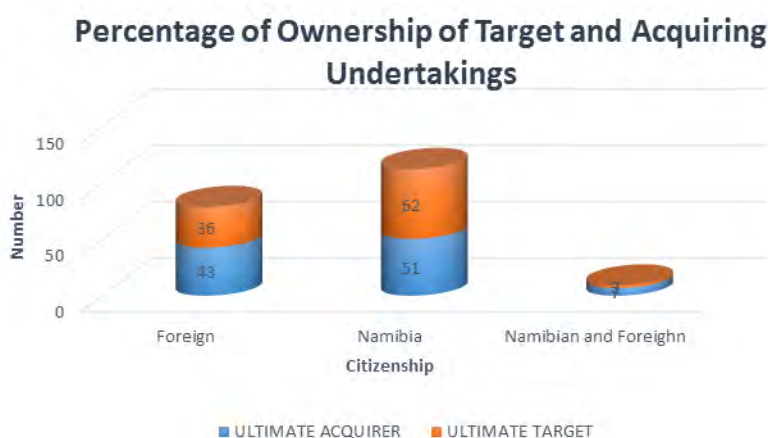
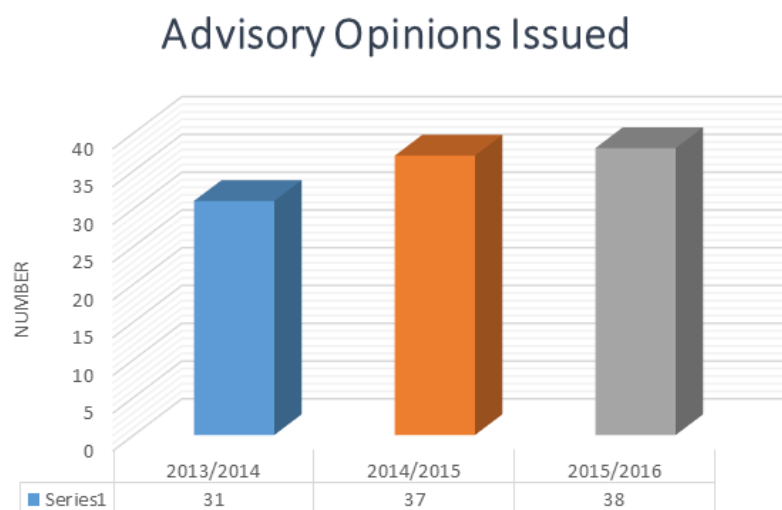


Figure 5: Advisory Opinions Issued



ADVISORY OPINIONS

As depicted in figure 5 left, during the period under review the division issued 38 advisory opinions. The number of advisory opinions issued by the division has increased steadily from 31 in the 2013/2014 financial year to 37 in the 2014/2015 financial year to the current 38 during the period under review.

Some of the advisory opinion sought related to the following issues:

Exclusive Prospecting Licence

Whether the Competition Act is applicable to the awarding of certain oil and gas exploration acreage by government.

Whether the acquisition of shares in a dormant entity that has a mining licence constitutes a merger and is thus notifiable.

Internal Restructuring

Whether the transfer of a subsidiary within a group, where the subsidiary does not remain wholly owned by the ultimate controller, is a merger.

Interrelated Transactions

Whether two transactions could be notified as one merger.

Control

Whether a transaction which entails the transfer of shares in several companies that were jointly owned by two family trusts to one of the trusts constitutes a change of control given that the acquirer had operational control over both trusts for years.

What Constitutes a Merger

Whether the acquisition of immovable property by a State-Owned Enterprise ("SOE") constitute a merger.

Filing Fee & Control

How the Commission calculates the value of the assets and turnover of the acquirer.

PUBLIC INTEREST CONSIDERATION

Public interest can be defined as the welfare of the public in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies. Public interest takes on varied formulations depending on the socioeconomic and political imperatives of each country.

In competition law the two main competition tests used to assess the competitive effects of a merger are the 'dominance' test or the 'substantial lessening of competition' (SLC) test. While some jurisdictions use one of the two competition test, our jurisdiction uses both tests. In terms of section 47(2) of the Competition Act, the Commission may base its determination of a proposed merger on any criteria which it considers relevant to the circumstances involved in the proposed merger, including –

a) the extent to which the proposed merger would be likely to prevent or lessen competition or to restrict trade or the provision of any service or to endanger the continuity of supplies or services;

b) the extent to which the proposed merger would be likely to result in any undertaking, including an undertaking not involved as a party in the proposed merger, acquiring a dominant position in a market or strengthening a dominant position in a market.

If a merger is likely to substantially prevent or lessen competition in the relevant market, the Commission must determine whether the merger is likely to result in any technological, efficiency or other pro-competitive gains. Section 47 (2) (c) and (g) provides that the Commission consider:

- Public benefit outweighing detrimental effects caused by 47 (2) (b);
- Any benefits likely to be derived relating to research and development, technical efficiency, increased production, efficient distribution of goods and services and access to markets.

In addition to assessing the likely competitive effects of a merger, the Commission must consider whether the merger can or cannot be justified on public interest grounds. In this regard section 47(2) of the Act provides that the Commission may base its determination of a proposed merger on any criteria which it considers relevant to the circumstances involved in the proposed merger, including –

- Effect on an industrial sector or region;
- Effect on employment;
- Market access/competitiveness of SMEs; and
- National industries ability to compete internationally

Therefore, a merger that does not raise any competition concerns may be conditionally approved or prohibited if it raises substantial public interest concerns. Conversely, a merger that raises competition concerns may be approved if it is likely to result in a significant positive impact on the public interest.

In line with this year's theme, "Safeguarding public interest in competition law enforcement", and regarding the 89 mergers that were determined during 2015/2016, the following three cases were approved with conditions:

- 1.The merger between Westrans Holdings (Pty) Ltd and FP du Toit Transport (Pty) Ltd;
- 2.The merger between Lewis Stores Namibia (Pty) Ltd and the retail businesses of Ellerines Namibia that trade under the "Beares" and "Ellerines" brands in Namibia, and;
- 3.The merger between Brukarros Meat Processors (Pty) Ltd and White Flower Investments Three (Pty) Ltd.

All three cases were approved subject to public interest considerations, mainly employment. The conditions were to ensure that: (1) no retrenchments or job losses arise as a result of the implementation of the merger for a period of two years; (2) in the event that retrenchments are unpreventable, that a minimal amount of employees be affected and that within those 2 years such employees be first considered for re-employment should new positions arise; (3) and that transferred employees are employed on terms and conditions of employment that are not less favourable to them than their existing terms and conditions of employment.



In Box 1 and 2 below are summaries of two mergers that were approved subject to conditions during 2015/2016 financial year.

The merger between Lewis Stores Namibia (Pty) Ltd and the business of Ellerines Furnishers (Namibia) (Pty) Ltd and Ellerines Retail (Namibia) (Pty) Ltd t/a "Beares" and "Ellerines" in Namibia

On the 20th of November, 2015, the Commission received a merger notification on the proposed transaction regarding the sale of the retail businesses of Ellerines Namibia that trade under the "Beares" and "Ellerines" brands in Namibia as a going concern to Lewis Stores Namibia (Pty) Ltd.

The primary acquiring undertaking was Lewis Stores Namibia (Pty) Ltd ("Lewis Namibia"), a company incorporated in accordance with the laws of Namibia. Lewis Namibia is controlled by Lewis Stores Proprietary Limited ("Lewis Stores South Africa"), a private company registered in the Republic of South Africa, and a wholly owned subsidiary of Lewis Group Limited ("LGL"), a public company listed on the JSE Limited ("JSE") in South Africa.

Lewis Namibia operates 27 ("Lewis") stores in 21 towns across Namibia, targeting the lower-to-middle income segments of the market.

The primary target undertakings comprised of the business of Ellerines Furnishers (Namibia) (Pty) Ltd ("EF Namibia") and Ellerines Retailer (Namibia) (Pty) Ltd ("EF Retail Namibia"), both companies are incorporated in accordance with the laws of Namibia.

EF Namibia and EF Retail Namibia are 100% controlled by Ellerines Services (Pty) Ltd ("Ellerines Services"). Ellerines Services is 100% controlled by Ellerines Furnishers (Pty) Ltd ("EF"), which is in turn 100% controlled by Ellerines Holdings Limited ("EHL"). EHL was 100% controlled by African Bank Investments Limited ("ABIL"), which listing of such shares were suspended.

The target group mainly trades through two trading brands, namely, "Ellerines" and "Beares". In Namibia the "Ellerines" brand comprises of 9 stores and the "Beares" brand comprises of 12 stores, totalling 21 stores. Beares and Ellerines stores predominantly sell lounge furniture, dining room furniture, bedroom furniture and bedding, beds and mattresses, kitchen furniture and appliances and audio visual appliances targeting the lower to middle income customer segment.

According to the Sale of Business Agreement, the proposed transaction involved Lewis Namibia acquiring 21 stores trading under the ("Beares" and "Ellerines") brands as well as, inter alia, the following assets associated with these stores: stock; fixed assets; combined debtors book; intellectual property; and goodwill.

The Commission found that although, the merger will reduce the number of competitors in the market for the retail of household furniture's and appliances, the proposed merger is unlikely to substantially prevent competition post-merger or result in any undertaking abusing its dominance in the market. To the contrary, by rebranding Ellerines stores into Beares, the proposed merger will increase competition by enabling Lewis Namibia through the Beares brand to enter and compete in the higher income market segment.

The proposed transaction was further found to have no negative impact on employment. The primary target undertaking employed 259 (246 permanent employees & 13 temporary employees) employees and all were to be retained post-merger. Hence, no employees were to be made redundant or be retrenched because of the implementation of the proposed merger. The Commission also considered the fact that since the primary target

undertaking was a failing firm, absent the proposed transaction, 259 employees were likely to lose their jobs.

However, the Commission was of the view that the rebranding/ repositioning of the "Beares" brand/stores to target a higher income customer segment in the market for the retail of household furniture and appliances might not be feasible in some parts (towns) of the country and could lead to retrenchment of employees. Therefore, to protect employment the Commission approved the proposed merger subject to the following conditions:

1. There shall be no retrenchment of employees of the merged undertakings as a result of the merger for a period of two years. The term "merged undertakings" means Lewis Stores Namibia (Pty) Ltd ("Lewis Namibia") and the businesses of Ellerine Furnishers (Namibia) (Pty) Ltd ("EF Namibia") and Ellerine Retailer (Namibia) (Pty) Ltd ("EF Retail Namibia"), trading under the names "Beares" and "Ellerines".

2. For the sake of clarity, retrenchments do not include:

- **voluntary separation and voluntary early retirement ("voluntary separations"); and**
- **retrenchments which are merger specific, but agreed on with the Commission in writing after the approval of the merger ("merger specific retrenchments").**

3. All employees transferred from Ellerines and Beares shall be employed by Lewis Namibia on terms and conditions of employment that are on the whole not less favourable to them than their existing terms and conditions of employment.

Merger between FP du Toit Transport (Pty) Ltd and Westrans Holdings (Pty) Ltd

In December 2014, the Commission received a merger notification, on the proposed acquisition of Westrans Holdings (Pty) Ltd by FP du Toit Transport (Pty) Ltd.

The FP du Toit group of companies provide transport and distribution services, including a range of logistics-related services.

They work out of nine depots across Namibia and South Africa and manage a fleet of more than a hundred vehicles on the road and subcontract 'in air' and 'on sea' services.

Its services include:

- Full-load and part-load haulage
- Refrigerated goods haulage
- Distribution service
- Overnight airfreight ex and to Johannesburg
- Overnight road freight from and to Johannesburg and Cape Town
- Second day road freight from and to Johannesburg and Cape Town
- Next day inter-Namibian road freight services
- International airfreight and courier services
- Management and execution of total logistics chain

It provides these services through 3 divisions, namely:

- **FP du Toit Transport**
- **Pro Parcel Distribution**
- **Jet-X Couriers**

The primary target undertaking was Westrans Group, a company active in the transport business and based in Walvis Bay, Namibia. It provides transport services through Wesbank Transport.

Wesbank provides the following services:

Long-haul – cross border transport or transporting of goods over long distances within Namibia by means of heavy trucks.

The proposed transaction involved FP du Toit Group of companies acquiring parts of the business of Westrans Holdings namely –

- The transport business of Wesbank Transport (Pty) Ltd as a going concern;
- A property known as Erf 1754, Walvis Bay, which property vests in Wesbank Property Development (Pty) Ltd;
- A property known as Erf 4984, Walvis Bay, which property vests in EP van Rooyen Property Holdings (Pty) Ltd;
- A property known as Erf 4409, Walvis Bay, which property vests in Erf 4409 Walvis Bay (Pty) Ltd; and
- Properties known as Erf 32196, 32197, 32198, 32199, Belville, Cape Town South Africa.

The proposed transaction raised no competition concerns, but did raise public interest concerns.

Wesbank employed 293 employees throughout Namibia. The merger constituted the sale of a business as a going concern and, as such, all the employees of Wesbank were to be retrenched. The retrenched employees could apply for appointment at FP du Toit which intended to appoint not less than 283 employees.

The Commission Approved the Proposed Merger Subject to the Following Conditions –

1. The acquiring undertaking shall be obliged to provide offers of permanent employment to all but 10 employees currently in the employ of the target undertaking

within Namibia within a period of 30 business days from the date on which the merger is determined by the Commission;

2. The offers of permanent employment to be made to the target undertaking's employees will be for positions similar to those held by the target undertaking's employees prior to the implementation of the merger and on the standard terms and conditions pertaining to employees of the acquiring undertaking, which terms and conditions, insofar as remuneration is concerned, will not be materially less favourable than those enjoyed by the target undertaking's employees prior to the merger, save insofar as individual employees, where applicable, were remunerated outside the Patterson remuneration bands, in which case offers of employment will be made within the Patterson remuneration bands;

3. For a period of two (2) years from the date on which the merger is determined by the Commission, whenever making new appointments the acquiring undertaking shall first consider employing the 10 employees who were not offered employment by the acquiring undertaking immediately following the implementation of the merger or subsequent thereto, provided that they meet the minimum requirements of the position; and

4. There shall be no retrenchment of the re-employed employees as a result of the merger for a period of 2 (two) years from the date on which the merger is determined by the Commission.

COMPLIANCE WITH CHAPTER 4 OF THE COMPETITION ACT

In terms of section 42 (1) of the Act a merger occurs when an undertaking directly or indirectly acquires control over the whole or part of the business of another undertaking. Section 42(2) provides that a merger may be achieved in any manner, including:

- purchase or lease of shares, an interest, or assets; or
- amalgamation or other combination with the other undertaking.

If the undertakings involved meet the merger thresholds, they are expected to file a merger notification with the Commission. If a merger is implemented without the Commission's approval or contrary to conditions imposed, the Commission may make an application to the High Court for:

- An interdict restraining the parties from further implementing the merger;
- An order directing any party to the merger to sell or dispose of in any manner, any shares, interest or other assets it has acquired pursuant to the merger;

- An order declaring void any agreement or provision of an agreement to which the merger was subject;
- The imposition of a pecuniary penalty of up to 10% of global annual turnover.

Further, the Commission in terms of section 48(1) may revoke a decision approving the implementation of a merger if:

- The decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or
- any condition attached to the approval of the merger that is material to the implementation is not complied with.

MONITORING & COMPLIANCE

The Commission is empowered to prohibit a merger that is likely to substantially prevent or lessen competition or harm the public interest. However, it may 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 the merged undertaking 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 undertakings, such as selling part of their business or assets.

During the 2015/2016 financial year, the Commission monitored the following mergers listed in Table 2 below. The conditions imposed on the below mergers are all behavioural in nature and as such require monitoring throughout the prescribed monitoring period.

Table 1: Mergers Monitored

MONITORING PERIOD 2015/16			
Merger	Date of Determination	Duration stipulated in condition	What the condition meant to address
Guinea Fowl Investments Twenty Five(Pty) Ltd// Anglogold Ashanti Namibia (Pty)Ltd	28 May 2014	2 years	Employment protection
Trustco Holdings Limited// Fides Bank Limited	20 June 2014	2 years	Employment protection
Agra Limited (Safari Den)// A. Rosenthal (Pty) Ltd//Kalahari Arms and Ammunitions (Pty) Ltd (Safari Guns and Outfitters)	27 June 2014	5 years	Avoidance of strengthening dominant position
Telecom Namibia Limited // Powercom (Pty) Ltd	27 April 2012	2 years	Avoidance of strengthening dominant position
Exarro Base Metals Namibia (Pty) Ltd// Wilru Investments One Hundred & Thirty Four (Pty) Ltd	27 April 2012	No specified time frame	Local beneficiation
FP Du Toit Transport (Pty) Ltd // Westrans Holdings (Pty) Ltd	21 April 2015	2 years	Employment protection

Once a merger is approved subject to conditions the merged entities are required to provide the Commission with compliance reports indicating their compliance. Failure to do so can lead to a merger approval being revoked in terms of section 48 (1) (b) of the Act.

For the relevant period the Commission has not proposed the revocation of any of the mergers being monitored.

NOTABLE ACHIEVEMENTS

In addition to its mandate regarding the implementation of Chapter 4 of the Competition Act, and in line with the strategic plan, the division recorded notable achievements. The division successfully revised and published the updated merger thresholds. The merger thresholds were accompanied by an explanatory note which was also published and is available on the Commission's website.

The division further produced quarterly reports detailing the division's activities and successfully produced external merger guidelines. The guidelines are also available on the Commission's website.



CORPORATE SERVICES





Mr. Gideon //Garoeb
Director: Corporate Service



Ms. Valentina Schaneck
Senior Human Resources Practitioner



Mr. Werner Hamata
Manager: Finance



Ms. Ndapewa Lukolo
Officer: Human Resources



Ms. Dina Gowases
Officer: Corporate Communications



Ms. Izelda Goagoses
Clerk: Records and Documentations



Ms. Rosina Gowases
Assistant Accountant



Mr. Rustin Kahuure
Officer: Administration



Mr. Ruben Ngalingombe
Officer: IT & Security



Mr. Marius Eichab
Receptionist



Ms. Claudia Konjore
Administrative Assistant



Mr. Paulus Kalembela
Driver & Messenger

CORPORATE SERVICES

INTRODUCTION

The Corporate Services Division aims to ensure that the Commission remains a centre of operational excellence through provision of information, communication and technology, human resources, financial management, facilities and administrative support services that enable the Commission to effectively discharge its mandate.

HUMAN CAPITAL

The Human Resources Division occupies a central role in the

Commission's activities with focus on employees; recruiting, promoting, training, and with the implementation of the Performance Management System. With the implementation of the performance management system, the Commission believes that its human capital will deliver in realising its mandate and thereby becoming a highly performing organisation.

Policy Revision

The Commission implemented the Performance Management Policy, thus inculcating and solidifying a performance based culture.

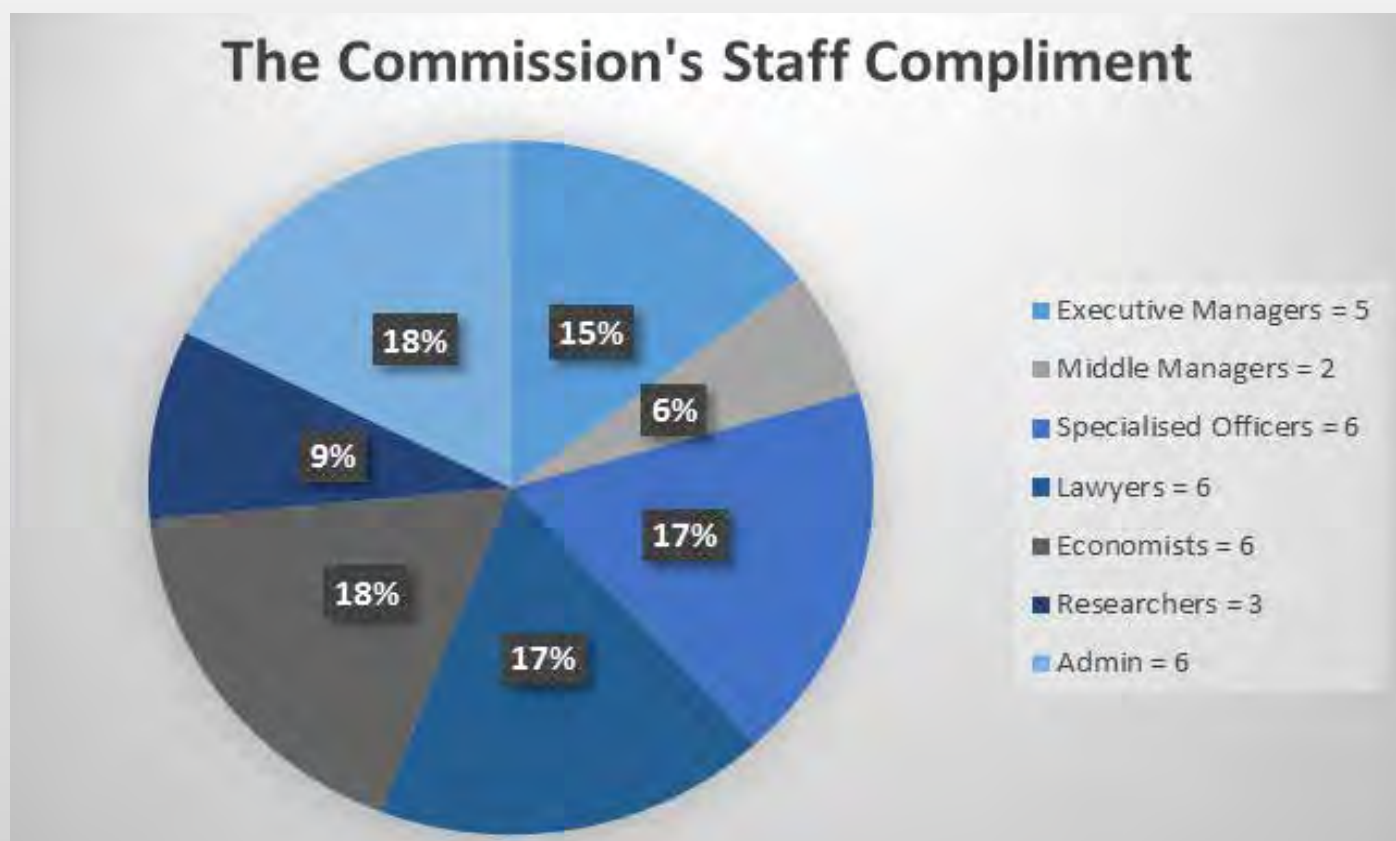
Staff Complement

The Commission has filled its organisation structure to a level of 97%. Three positions were not filled during the reporting period. Of this total of 34, 5 are executive managers, 6 are economists, 6 are lawyers, 6 are specialised officers, 3 researchers, 2 middle managers, and 6 administrative employees.

Table 1: Staff Complement

Financial Year	Statistics
Total Number of Employees	34
Number of Males	16
Number of Females	18
Number of Employees with disabilities	0
Number of Temporary Employees	0
Number of Interns	1

Figure 1



Wellness Programme

The Commission has young and dynamic professionals in its employment and acknowledges the stressful and burdensome nature of its operations. In recognition of this the Commission hosted a Wellness Day as part of health awareness for communicable and life threatening diseases and conditions. Participation was voluntary. The employees participated in the following programmes:

- Massage therapy
- Physical exercises
- General cancer awareness
- HIV counselling and testing
- Cholesterol testing
- Body mass index

Achievements

The following employees have been in the employ of the Commission for the past five years:

- Mihe Gaomab employed since 1 September 2009
- Gideon Garoeb employed since 1 October 2010
- Vitalis Ndalikokule employed since 1 May 2010
- Claudia Konjore employed since 1 April 2010
- Martha Hawanga employed since 1 October 2010
- Izelda Goagoses employed since 1 April 2010
- Bernatus Goreseb employed since 1 April 2010

Learning and Development

The Commission continues to train its staff members in competition law and policy, enforcement and advocacy. The Commission further ensures representation at international annual competition law conferences across the globe to remain abreast of developments in its area of responsibility.

Staff Turnover

The Commission only had one staff member who left, and maintains a healthy retention rate of its critical staff.

CORPORATE COMMUNICATIONS

The Commission's Corporate Communications, as the custodian of stakeholder relations, continue to advocate the mandate of the company through various internal and external platforms.

Internal Relations

In order to boost morale and ensure that employees internalise the mandate of the Commission as their own, bi-monthly social gatherings are held through "the Happy Hour", employees birthdays are acknowledged and so too any births or deaths in their respective families. The employees are informed of various changes and decisions made in the Commission through the internal news update, as well as memos and email. The corporate communications department organises staff meetings on behalf of the Office of the CEO for interpersonal communication.

Media Relations

The media play a pertinent role in the information-dissemination of the Commission's activities to the public. Therefore, the Commission finds it imperative to maintain a sound advocacy partnership with this tier in the value chain of economic growth.

In the period under review, the Commission issued a total of 10 media statements, conducted five broadcasts (radio and television) interviews and published 20 educational and policy articles in various news media.

Publications and Website

To update its stakeholders on the latest developments within the Commission and to build compliancy, the company publishes

a quarterly newsletter which is distributed to 2000 stakeholders including exhibition goers, educational institutions, libraries, medical institutions, trade unions, law institutions and the public.

On the social media front, the Commission has increased its presence through its Facebook page with page views of up to 600 per post in weekly intervals. The website remains the main wealth of information on the Commissions mandate and its activities and is accessible by stakeholders around the globe.

ADMINISTRATION

Facilities Management

The Commission currently rents office space but is considering options to obtain own office accommodation.

ANNUAL FINANCIAL STATEMENTS



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Awareness Advocacy
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REPUBLIC OF NAMIBIA



**How protected are
Nam consumers?**



**REPORT OF THE AUDITOR-GENERAL ON THE ACCOUNTS OF THE
NAMIBIAN COMPETITION COMMISSION
FOR THE FINANCIAL YEAR ENDED 31 MARCH 2016**

Published by authority

Price (Vat excluded) N\$ 34.00
Report no: 2017/60

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 2016, in terms of Article 127(2) of the Namibian Constitution. The report is transmitted to the Honourable Minister of Finance in terms of Section 27(1) of the State Finance Act, 1991, (Act 31 of 1991) to be laid upon the Table of the National Assembly in terms of Section 27(4) of the Act.

A handwritten signature in black ink, appearing to read 'Junias Etuna Kandjeke'.

JUNIAS ETUNA KANDJEKE
AUDITOR-GENERAL

WINDHOEK, June 2017

**REPORT OF THE AUDITOR - GENERAL
ON THE ACCOUNTS OF THE NAMIBIAN COMPETITION COMMISSION
FOR THE FINANCIAL YEAR ENDED
31 MARCH 2016**

1. REPORT ON THE FINANCIAL STATEMENTS

1.1 INTRODUCTION

The accounts of the Namibian Competition Commission for the financial year ended 31 March 2016 are being reported on in accordance with the provisions set out in terms of section 20 (4) of the Competition Act, (Act No. 2 of 2003).

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 2016. These financial statements comprise the following:

Annexure A: Statement of financial position;
Annexure B: Statement of financial performance;
Annexure C: Statement of changes in equity;
Annexure D: Cash flow statement;
Annexure E: Notes to the financial statements; and
Annexure F: Detailed statement of financial performance.

The financial statements were submitted by the Accounting Officer to the Auditor-General in compliance with section 20 (4) of the Competition Act, 2003 (Act No. 2 of 2003), except that they were only submitted 11 January 2017 instead of 3 months after the year end as required by the Act.

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 20 (2) of the Competition Act, 2003 (Act 2 of 2003), 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. ACKNOWLEDGEMENT

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

5. KEY AUDIT FINDINGS

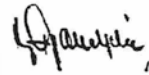
No key audit findings were observed.

6. UNQUALIFIED AUDIT OPINION

The accounts of the Namibian Competition Commission for the financial year ended 31 March 2016, summarized in Annexures A to E, were audited by me in terms of Section 20 (4) of the Competition Act, 2003 (Act No. 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 2016 and its financial performance and its cashflows for the year then ended.

WINDHOEK, June 2017



**JUNIAS ETUNA KANDJEKE
AUDITOR-GENERAL**

NAMIBIAN COMPETITION COMMISSION
ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 March 2016
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 YEAR ENDED 31 March 2016
COMMISSION'S RESPONSIBILITY & APPROVAL

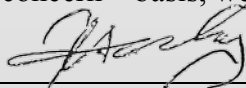
The Commission is required by the Competition Act (Act No. 2 of 2003), to maintain adequate accounting records and is responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is their responsibility to ensure that the annual 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 flows for the period then ended, 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 level risk.

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 concluded 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 ended 31 March 2016 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.

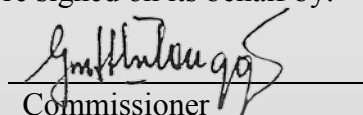
The annual financial statements set out on page 5 to 19, which have been prepared on the going concern basis, were approved by the Commission and were signed on its behalf by:



Chairman of the Commission
Windhoek

20 / 06 / 2017

Date



Commissioner

NAMIBIAN COMPETITION COMMISSION
ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 March 2016
SECRETARY'S REPORT

The Secretary has pleasure in submitting the report on the annual financial statements of the Namibian Competition Commission for the year ended 31 March 2016.

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. Nature of Business

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, and operates principally in Namibia.

There have been no material changes to the nature of the Commission's business from the prior year.

3. Review of financial results and activities

The annual financial statements have been prepared in accordance with International financial Reporting Standards and the requirements of the Companies Act of Namibia. The accounting policies have been applied consistently compared to the prior year.

Full details of the financial position, results of operations and cash flows of the commission are set out in these annual financial statements.

4. 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 that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

5. Commissioners

The commissioners in office at the date of this report are as follows:

Commissioners	Date Appointed	Nationality
Dr. Sackey Akweenda (Chairperson)	11 February 2015	Namibian
Mr. Gideon Shilongo	11 February 2015	Namibian
Ms. Teresia Kaulihowa	11 February 2015	Namibian
Mr. Ngidinua Daniel	01 February 2010	Namibian
Ms. Malverene Theron	17 September 2013	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	01 September 2009	Namibian

ANNEXURE A

NAMIBIAN COMPETITION COMMISSION
STATEMENT OF FINANCIAL POSITION AS AT 31 MARCH

	Note	2016	2015
		N\$	N\$
ASSETS			
Non-Current Assets		849 703	1 223 709
Property, plant and equipment	3	849 703	1 223 709
Current Assets		22 066 462	29 972 651
Trade and other receivables	4	321 582	240 864
Cash and cash equivalents	5	21 744 880	29 731 787
Total Assets		22 916 165	31 196 360
EQUITY AND LIABILITIES		22 916 165	31 196 360
Accumulated surplus		19 746 073	23 576 040
Trade and other payables	6	3 170 092	7 620 320
Total Equity and Liabilities		22 916 165	31 196 360

ANNEXURE B

NAMIBIAN COMPETITION COMMISSION
STATEMENT OF FINANCIAL PERFORMANCE FOR THE FINANCIAL YEAR
ENDED 31 MARCH

	Note	2016	2015
		N\$	N\$
Revenue	7	26 429 792	28 057 546
Operating expenses		31 566 389	29 775 178
Operating profit/(Loss)		(5 136 597)	(1 717 632)
Investment revenue	8	1 295 310	1 320 992
Total comprehensive income for the 12 months		(3 841 287)	(396 640)

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

	Accumulated surplus	Total equity
	N\$	N\$
Balance at 01 April 2014	23 983 998	23 983 998
Changes in equity		
Total comprehensive loss for the 12 months	(396 638)	(396 638)
Balance at 01 April 2015	23 587 360	23 587 360
Changes in equity		
Total comprehensive loss for the year	(3 841 287)	(3 841 287)
Balance at 31 March 2016	19 746 073	19 746 073

NAMIBIAN COMPETITION COMMISSION

CASH FLOW STATEMENT FOR THE FINANCIAL YEAR ENDED 31 MARCH

	Note	2016	2015
		N\$	N\$
Cash flow from operating activities			
Cash receipts from customers and government grants		26 349 075	28 224 950
Cash paid to suppliers and employees		(35 434 781)	(22 617 443)
Cash generated from operations	9	(9 085 706)	5 607 507
Interest income		1 295 310	1 320 992
Net cash from operating activities		(7 790 396)	6 928 499
Cash flows from investing activities			
Purchase of property, plant and equipment	3	(196 512)	(164 985)
Total cash movement for the 12 months		(7 986 908)	6 763 514
Cash at beginning of the		29 731 788	22 968 274
Total cash at end of the 12 months		21 744 880	29 731 788

**NAMIBIAN COMPETITION COMMISSION
NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH 2016**

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.

**NAMIBIAN COMPETITION COMMISSION
NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH 2016 (Continued)**

1. ACCOUNTING POLICIES (Continued)

1.1.2 Significant judgements (Continued)

Taxation

The Commission has interpreted the Competition Act and Tax laws and concluded that the Commission is exempt 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.

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 Fixtures	3 Years
Motor Vehicles	5 Years
IT Equipment and Softwares	3 Years
Other Fixed Assets	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 derecognition of an item of property, plant and equipment is included in profit or loss when the item is derecognised.

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH 2016 (Continued)

1. ACCOUNTING POLICIES (Continued)

1.1.3 Property, plant and equipment (Continued)

The gain or loss arising from the derecognition 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.

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 unlisted securities), the commission establishes fair value by using valuation techniques. These include the use of recent arm's length transactions, reference to other instruments that are substantially the same, discounted cashflow 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.

**NAMIBIAN COMPETITION COMMISSION
NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH 2016 (Continued)**

1. ACCOUNTING POLICIES (Continued)

1.1.4 Financial Instruments (Continued)

Trade and other receivables (Continued)

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.

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.

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH 2016 (Continued)

1. ACCOUNTING POLICIES (Continued)

1.1.6 Impairment of assets (Continued)

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 the 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.

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.

NAMIBIAN COMPETITION COMMISSION
NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH 2016 (Continued)

1. ACCOUNTING POLICIES (continued)

1.1.7 Provisions and contingencies (continued)

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 (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 interest rate method.

2. APPLICATION OF NEW AND REVISED INTERNATIONAL FINANCIAL REPORTING STANDARDS

Amendments in International Accounting Standards (“IAS”) and IFRS

IAS/IFRS	Pronouncement	Effective date
IFRS 10 and IAS 28	Amendments to Sale or Contribution of Assets between an Investor and its Associate or Joint Venture	01 January 2016
IFRS 10, IFRS 12 and IAS 28	Amendments to Investment Entities: Applying the Consolidation Exception	01 January 2016
IFRS 11	Amendments to Accounting for Acquisitions of Interest in Joint Operations	01 January 2016
IFRS 14	Regulatory Deferral Accounts	01 January 2016

NAMIBIAN COMPETITION COMMISSION

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH 2016 (Continued)**2. APPLICATION OF NEW AND REVISED INTERNATIONAL FINANCIAL
REPORTING STANDARDS****Amendments in International Accounting Standards (“IAS”) and IFRS**

IAS/IFRS	Pronouncement	Effective date
IAS 1	Amendments to Disclosure Initiative	01 January 2016
IAS 16 and IAS 38	Amendments to Clarification of Acceptable Methods of Depreciation and Amortisation	01 January 2016
IAS 16 and IAS 41	Agriculture – Bearer plants – Amendments to IAS 16 and IAS 41	01 January 2016
IAS 27	Amendments to Equity Method in Separate Financial Statements	01 January 2016
IFRS 5	Non – Current Assets Held for Sale and Discontinued Operations – Changes in methods of disposal	01 January 2016
IFRS 7	Financial Instruments: Disclosures – Servicing contracts	01 January 2016
IFRS 7	Financial Instruments: Disclosures – Applicability of the offsetting disclosures to condensed interim financial statements	01 January 2016
IAS 19	Employee Benefits – Discount rate: regional market issue	01 January 2016
IAS 34	Interim Financial Reporting - Disclosure of information elsewhere in the interim financial report	01 January 2016
IFRS 15	Revenue from Contracts with Customers	01 January 2016
IFRS 9	Financial Instruments	01 January 2016

NAMIBIAN COMPETITION COMMISSION

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2016
(Continued)

3. PROPERTY, PLANT AND EQUIPMENT

	2016			2015		
	Cost/ Valuation	Accumulated depreciation	Carrying Value	Cost/ Valuation	Accumulated depreciation	Carrying Value
	N\$	N\$	N\$	N\$	N\$	N\$
Furniture and Fixtures	1 711 958	(1 291 719)	420 239	1 711 957	(1 022 998)	688 959
Motor Vehicles	530 349	(375 207)	155 142	530 349	(290 351)	239 998
IT equipment	1 314 276	(1 157 420)	156 856	1 209 704	(1 009 266)	200 438
Other Fixed Asset	114 619	(64 224)	50 395	80 877	(46 483)	34 394
Office Equipments	129 586	(89 109)	40 477	117 096	(61 040)	56 056
Cell Phones	103 031	(76 437)	26 594	57 323	(53 459)	3 864
Minor Assets	297 461	(297 461)	-	297 461	(297 461)	-
Total	4 201 280	(3 351 577)	849 703	4 004 767	(2 781 058)	1 223 709

Reconciliation of property, plant and equipment - 2016

	Opening Balance	Additions	Written/ off	Depreciation	Total
	N\$	N\$	N\$	N\$	N\$
Furniture and Fixtures	688 959	-	-	(268 720)	420 239
Motor Vehicles	239 998	-	-	(84 854)	155 144
IT equipment	200 438	104 572	-	(148 154)	156 856
Other Fixed Asset	34 394	33 742	-	(17 741)	50 394
Office Equipments	56 056	12 490	-	(28 069)	40 477
Cell Phones	3 864	45 708	-	(22 979)	26 593
Total	1 223 709	196 512	-	(570 517)	849 703

NAMIBIAN COMPETITION COMMISSION

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH (Continued)

3. PROPERTY, PLANT AND EQUIPMENT (Continued)

Reconciliation of property, plant and equipment - 2015

	Opening Balance	Additions	Written/ off	Depreciation	Total
	N\$	N\$	N\$	N\$	N\$
Furniture and Fixtures	947 524	42 357	-	(300 922)	688 959
Motor Vehicles	324 853	-	-	(84 855)	239 998
IT equipment	318 056	71 032	-	(188 650)	200 438
Other Fixed Asset	48 951	-	-	(14 558)	34 393
Office Equipment	36 708	37 534	-	(18 186)	56 056
Cell Phones	13 237	-	-	(9 373)	3 864
Minor Assets	-	14 062	-	(14 062)	-
	1 689 329	164 985	-	(630 606)	1 223 708

4. TRADE AND OTHER RECEIVABLES

	2016	2015
	N\$	N\$
Trade receivables	-	68 237
Accrued Income	-	1 225
Deposits	272 258	171 402
Study loans	49 324	-
	321 582	240 864

NAMIBIAN COMPETITION COMMISSION

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 MARCH (Continued)

	2016	2015
	N\$	N\$
5. CASH AND CASH EQUIVALENTS		
Cash and cash equivalent consist of:		
Cash on hand	2 320	942
Bank balances - Cheques account	6 036 801	5 992 391
Bank balances - Call account	1 266 217	1 205 522
Bank balances - Call account	-	7 292 850
Bank balances - Fixed account	14 439 542	15 240 082
	21 744 880	29 731 787

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:

Credit rating		
A1 +	2 174 481	29 731 788

6. TRADE AND OTHER PAYABLES

Accrued expense	1 703 473	-
Accrued expense - Creditors	155 125	1 699 862
Income Received in Advance	-	5 000 000
Leave provision	1 311 494	920 458
	3 170 092	7 620 320

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

	2016	2015
	N\$	N\$
7. REVENUE		
Fee Income	10 294 052	10 057 546
Government grants received	16 135 740	18 000 000
	26 429 792	28 057 546
8. INVESTMENT REVENUE		
Interest revenue		
Bank	1 295 310	1 320 992
9. CASH GENERATED FROM OPERATIONS		
Profit/Loss before taxation	(3 841 287)	(396 640)
Adjustments for:		
Depreciation and amortisation	570 517	630 606
Interest received	(1 295 310)	(1 320 992)
Prior year adjustments	11 319	
Changes in working capital:		
Trade and other receivables	(80 718)	167 404
Trade and other payables	(4 450 228)	6 527 129
	(9 085 707)	5 607 507

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

	2016	2015
	N\$	N\$
10. COMMITMENTS		
Operating leases - as lessee (expense)		
Minimum lease payments due		
- within one year	370 890	3 172 184
- in second to third year inclusive	3 927 988	6 832 670
	4 298 878	10 004 854

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

11. 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 ongoing review of review of future commitments and facilities.

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 cashflows are substantially independent of changes in market interest rates.

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

11. CAPITAL RISK MANAGEMENT (Continued)

Credit Risk

Credit Risk consist mainly of cash deposits, cash equivalents, derivative financial instruments and trade debtors. The Commission only deposits cash with major banks with high quality credit standings and limits exposure to any one counter – party.

Foreign exchange risk

The commission is not exposed to foreign currency exchange risks.

NAMIBIAN COMPETITION COMMISSION
DETAILED STATEMENT OF FINANCIAL PERFORMANCE FOR THE FINANCIAL
YEAR ENDED 31 MARCH

ANNEXURE F

	2016	2015
	N\$	N\$
Revenue	26 429 792	28 057 546
Fee Income	10 294 052	10 057 546
Government grants received	16 135 740	18 000 000
Interest received	1 295 310	1 320 992
Operating expenses	31 566 389	29 775 178
Accommodation & meals	84 876	400 514
Advertising	1 233 311	1 258 490
Auditing and accounting fees	363 425	-
Bank Charges	41 985	38 619
Cleaning	117 712	91 371
Board seating fees	290 348	322 240
Computer expenses	287 062	250 361
Consulting and professional fees	2 016 233	1 715 750
Depreciation, amortisation and impairments	570 517	630 606
Donations	10 000	48 090
Discount allowed for cash	40	-
Employee costs	16 967 935	17 299 070
Entertainment	7 500	17 095
Insurance	66 427	93 029
Lease rental on operating lease	3 570 898	3 014 602
Legal fees	2 263 133	476 172
Library Materials	20 082	16 646
Motor vehicle expenses	52 949	39 669
Postages	7 283	6 976
Printing and stationery	309 354	372 257
Repairs and maintenance	97 312	207 920
Security	6 273	4 575
Office consumables	254 948	252 660
Subscriptions	121 069	102 018
Subsistence and travelling	87 038	322 167
Telephone and fax	491 517	509 917
Training	1 171 175	1 405 008
Transport expenses	767 378	631 319
Water & Electricity	288 609	248 037
Surplus/(loss) for the year	(3 841 287)	(396 640)



**Namibian
Competition
Commission**

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