



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$12.00

WINDHOEK - 23 July 2019

No. 6959

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 263

2019

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
NAMIBIAN COMPETITION COMMISSION // SANTAM NAMIBIA LIMITED
AND 82 OTHERS
(CASE NUMBER: 2016OCT0008COMP)

Competition Act, 2003
(Section 41, Rule 20(1))

1. The Commission during November 2016 initiated an investigation against:
 - 1.1 Santam Namibia Ltd ("Santam");
 - 1.2 Alexander Forbes Insurance Company Ltd ("AFI");
 - 1.3 Hollard Insurance Company of Namibia Ltd ("Hollard");
 - 1.4 Old Mutual Short-Term Insurance Company Ltd ("OMSIC");
 - 1.5 Outsurance Insurance Company of Namibia Ltd ("Outsurance");
 - 1.6 Phoenix Assurance Namibia Ltd ("Phoenix"); and

1.7 Momentum Short-Term Insurance Ltd (previously Quanta Insurance Ltd) (“Momentum”)

(jointly referred to as “the Respondents”).

2. The Commission on 2 May 2018 gave notice of its preliminary decision that section 23(1) read with section 23(2)(a) and section 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Respondents. However, before the Commission could make a decision regarding whether to proceed and institute Court proceedings in accordance with section 38 of the Act, the Commission and Santam on 02nd July 2019 entered into a Consent Agreement in terms of section 40 of the Act.
3. The Commission gives notice that it intends to submit the attached Consent Agreement with Santam to the High Court of Namibia for confirmation as an order of the Court as contemplated in section 40 (1) of the Act.
4. The nature of the conduct that is the subject of the Consent Agreement is:
 - 4.1 The Commission’s investigation found that the Respondents have contravened section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act by engaging in the setting of mark-ups that the panel beaters should charge for repairs and setting of maximum rates that panel beaters should charge for their labour.
 - 4.2 Santam admits that its conduct constitutes an unintended contravention of section 23 of the Act.
 - 4.3 The Commission and Santam have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

V. NDALIKOKULE
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

Windhoek, 8 July 2019

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

APPLICANT

and

SANTAM NAMIBIA LIMITED

RESPONDENT

**CONSENT AGREEMENT BETWEEN THE APPLICANT ON THE ONE HAND AND
THE RESPONDENT ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION
PERTAINING TO ALLEGED CONTRAVENTION OF SECTION 23(1) AS READ WITH
SECTIONS 23(2)(a) AND 23(3)(a) OF THE COMPETITION ACT NO. 2 OF 2003**

WHEREAS the Commission upon the receipt of information decided to initiate an investigation into the conduct of the Respondent for an alleged contravention of section 23(1) read with sections 23(2) (a) and 23(3)(a) of the Act.

AND WHEREAS the Respondent, in settlement of the investigation by the Commission under case number: 2016OCT0008COMP, has decided to enter into a Consent Agreement as contemplated in section 40(1) of the Act.

NOW THEREFORE the Commission and the Respondent hereby agree that an application be made to the High Court of Namibia for confirmation of this Consent Agreement as an order of the High Court of Namibia in terms of section 40 read with section 52 of the Act in the terms set out below:

1. DEFINITIONS

In this Consent Agreement, unless the context indicates otherwise, the following definitions shall apply:

- 1.1 “**Act**” means the Competition Act No. 2 of 2003;
- 1.2 “**Commission**” means the Namibian Competition Commission, a juristic person as established in terms of section 4 of the Act;
- 1.3 “**Consent Agreement**” means this Consent Agreement, duly signed and concluded between the Commission and the Respondent, as contemplated in section 40 (1) of the Act;
- 1.4 “**Conduct**” means any conduct the Respondent has engaged in with the respondents cited in the Commission’s Form 6, attached hereto as Annexure “A”, that had the object or effect of setting -
 - 1.4.1 the mark-ups that panel beaters should charge in respect of the parts these panel beaters used in the repair of motor vehicles; and
 - 1.4.2 the maximum rates that panel beaters should charge for their labour in respect of the repair of motor vehicles.
- 1.5 “**Investigation**” means the investigation initiated against the Respondent by the Commission in terms of section 33(1) of the Act under case number 2016OCT0008COMP;

- 1.6 **“Respondent”** means **Santam Namibia Limited**, a company duly incorporated in accordance with the laws of the Republic of Namibia.

2. COMMISSION’S FINDINGS

The Commission’s Investigation found that the Respondent contravened section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act by engaging in the Conduct.

3. ADMISSION OF LIABILITY

3.1 The Respondent admits that its Conduct constitutes an unintended contravention of section 23 of the Act.

3.2 The Commission and the Respondent therefore agree to settle this matter on the terms and conditions herein in full and final settlement.

4. CESSATION OF CONDUCT

The Respondent records it has ceased the Conduct and shall take all necessary steps to ensure that it does not engage in the Conduct in future.

5. COMPLIANCE PROGRAMME

5.1 In addition to the above, the Respondent will develop and implement a compliance programme on competition law in Namibia to ensure that its employees, management and directors do not engage in any conduct that is prohibited in terms of the Act.

5.2 A copy of the compliance programme will be supplied to the Commission within sixty (60) days of the date of confirmation of the Consent Agreement as an order of Court.

5.3 The Respondent shall produce a compliance programme progress report six (6) months after the submission of the compliance programme to the Commission as contemplated by paragraph 5.2 above and subsequently at any future date if and when requested to do so by the Commission.

6. AGREEMENT CONCERNING FUTURE CONDUCT

6.1 The Respondent will prepare a statement summarising the content of the Consent Agreement to its employees who are in management within thirty (30) days of the date of the confirmation of this Consent Agreement as an order of the Court.

6.2 The Respondent shall act in accordance with the terms of this Consent Agreement and shall implement the following measures:

6.2.1 Review all its policies, practices and operations by way of internal audits.

6.2.2 Invest in the education of its staff on an ongoing basis on matters pertaining to competition law compliance in Namibia.

6.2.3 Actively engage the Commission by obtaining advisory opinions to assist in identifying and implementing best practices.

6.2.4 Implement a zero-tolerance policy towards anti-competitive behaviour by its staff.

7. PENALTY

- 7.1 The Respondent will pay a penalty of N\$ 15 000 000.00 (Fifteen million Namibian dollars).
- 7.2 The amount becomes payable upon confirmation of this Consent Agreement as an order of the Court.
- 7.3 The Respondent shall remit payment of the penalty into the following bank account:

| | |
|--------------------------------|--|
| Name of Account holder: | NAMIBIAN COMPETITION COMMISSION |
| Bank Name: | BANK WINDHOEK |
| Account Number: | 8001663543 |
| Branch: | Main Branch |
| Branch code: | 481972 |
| Reference: | 2016OCT0008COMP |

8. COURT ORDER

- 8.1 The Consent Agreement is conditional upon it being confirmed as an order of the Court. Should the Court not confirm the Consent Agreement, all terms of the Consent Agreement shall lapse and have no force and effect and will not be used as evidence against the Respondent in any proceeding whatsoever.
- 8.2 Each Party will carry its own costs of the application to the Court for confirmation of the Consent Agreement.
- 8.3 Notwithstanding the above, the Respondent shall carry the Commission's costs in respect of the confirmation of this Consent Agreement as an order of Court, if the Respondent for whatever reason repudiates the Consent Agreement or opposes the Commission's application for confirmation of the Consent Agreement by Court.

9. FULL AND FINAL SETTLEMENT

The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Investigation and shall conclude the proceedings under case number 2016OCT0008COMP in respect of the Respondent.

CONSENT AGREEMENT - ANNEXURE A**FORM 6**

NAMIBIAN COMPETITION COMMISSION
NOTICE OF PROPOSED DECISION OF COMMISSION
IN RELATION TO INVESTIGATION
 COMPETITION ACT, 2003
 (Section 36(1), Rule 17)

To: **Santam Namibia Ltd**
 Mr. Franco Feris
 C/O Robert Mugabe & Lazarette Street
 Tenbergen Village
 Windhoek, Namibia

**THE NAMIBIAN COMPETITION COMMISSION//SANTAM NAMIBIA LIMITED AND
 82 OTHERS (CASE NUMBER: 2016OCT0008COMP)**

1. The Namibian Competition Commission ("the Commission") upon receipt of information decided to initiate an investigation against the above-named respondent on 29 August 2016, in terms of Section 33(1) and 33(3) of the Act.
2. The Commission proposes to make a decision that-
 - (a) the Part I prohibition has been infringed *
 - (b) ~~the Part II prohibition has not been infringed.~~ *

Please refer to Annexure A attached hereto which describes the Part I infringement with respect to which the Commission proposes to make a decision.

3. The reasons for the proposed decision are:

Please refer to Annexure A attached hereto.

4. The Commission considers to seek the following relief from the Court by way of the institution of proceedings in accordance with section 38:

Please refer to Annexure A attached hereto.

5. In relation to the proposed decision of the Commission you may-

- (a) submit written representations to the Commission;
- (b) indicate whether you require an opportunity to make oral representations to the Commission,

within 30 days as from the date of this notice.

MR. GIDEON SHILONGO
CHAIRPERSON

27 April 2018

FORM 6 - ANNEXURE A**1. INTRODUCTION**

- 1.1 This Annexure A document forms part of the Form 6 issued in terms of section 36 of the Namibian Competition Act, 2003 (Act 2 of 2003) (“the Competition Act”) and Rule 17 of the Rules of the Competition Act.
- 1.2 This Form 6 is issued in compliance with the requirements of the Competition Act and as a consequence of an investigation conducted by the Namibian Competition Commission (“the Commission”) in respect of alleged contraventions of section 23 of the Competition Act (being “Part I prohibition” within the meaning of the Competition Act).
- 1.3 The investigation related to the conduct of certain insurance companies and panel beaters, and whether the conduct of determining, setting, imposing and/or establishing maximum mark-up rates for vehicle parts and labour rates for panel beaters may be prohibited in terms of the Competition Act, as an agreement and/or concerted practice between undertakings in a horizontal relationship (being undertakings trading in competition) and/or undertakings in a vertical relationship (being an undertaking and its suppliers or customers or both), in contravention of section 23 of the Competition Act.
- 1.4 The investigation identified the relevant market as that of the provision of panel beating services¹ to insured vehicles. Following its investigation, the Commission concluded that the relevant provisions of Part I of the Competition Act have been infringed, more specifically section 23 (1) read with sections 23(2)(a) (undertakings in a horizontal relationship) and section 23(3)(a) (directly or indirectly fixing purchase or selling prices or any other trading condition). The Commission therefore proposes to make a decision in that regard. Importantly, however, no final decision has been made and the Commission wishes to invoke the process contemplated by section 36 of the Competition Act and afford affected undertakings or parties an opportunity to make written submissions or oral representations to the Commission.
- 1.5 Consistent with the requirements of section 36 of the Competition Act, this Form 6 serves as written notice of the Commission’s proposed decision to undertakings who may be affected by that decision. This Form further states the reasons for the Commission’s proposed decision and sets out details of any relief that the Commission may consider to seek from the Court by way of institution of section 38 proceedings.

2. AFFECTED UNDERTAKINGS

The following undertakings may be affected by the proposed decision and are afforded the entitlements under section 36 of the Competition Act.

2.1 Undertakings against whom relief will not be sought

These undertakings/associations/organizations are not party to the investigation but may be affected by the Commission’s decision:

¹ “Panel beating services” includes general repairs, spray painting and parts replacement.

- 2.1.1 **Namibia Financial Institutions Supervisory Authority**, an independent institution established by virtue of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act 3 of 2001) to regulate and supervise financial institutions in the financial services industry and having its place of business located at 154 Independence Avenue, Sanlam Centre, 13th Floor, Windhoek, Namibia;
- 2.1.2 **Namibia Insurance Association**, a voluntary association for short-term insurance companies with its place of business at Tenbergen Village, c/o Robert Mugabe and Lazarett Street, Windhoek, Namibia;
- 2.1.3 **Namibia Insurance Brokers Association**, a voluntary association for brokers in the insurance industry with its place of business at Town Square, Standard Bank Building, 1st Floor, Windhoek, Namibia;
- 2.1.4 **Association of Independent Marketers**, a voluntary association for independent marketers/agents in the insurance industry with its place of business at 1549, Tauben Glen Street, Hochland Park, Windhoek, Namibia; and
- 2.1.5 **Collision Repairers Association of Namibia**, a voluntary association for panel beaters with its place of business located at 21 Newcastle Street, Northern Industrial Area, Windhoek, Namibia.

These undertakings were found not to have contravened the Competition Act but may be affected by the Commission's decision:

- 2.1.6 **Corporate Guarantee Ltd**, a short-term insurance company with its place of business located at No.17 Luderitz Street, Corporate House, 1st Floor, Windhoek, Namibia;
- 2.1.7 **King Price Insurance Company of Namibia Ltd**, a short-term insurance company with its place of business located at the City Plaza Building, 3rd Floor, Sam Nujoma Drive, Klein Windhoek, Namibia;
- 2.1.8 **Prosperity Insurance Ltd**, a short-term insurance company with its place of business located at No. 8 Storch Street, Mozart Square, Windhoek, Namibia;
- 2.1.9 **Ripley's Insurance Ltd**, a short-term insurance company with its place of business located at the No 29, Tacoma Street, Suiderhof, Windhoek, Namibia; and
- 2.1.10 **Western National Insurance Company Ltd**, a short-term insurance company with its place of business located at Ballot Street, Western Square, 2nd Floor, Windhoek, Namibia.
- 2.1.11 **Apex Panel Beaters**, a vehicle repair undertaking with its place of business located at Erf. 1601 Hatting Street, Otjiwarongo, Namibia;
- 2.1.12 **A. Team Panel Beaters**, a vehicle repair undertaking with its place of business located at Erf. 9 Van Eck industrial Area, Otjiwarongo Namibia;
- 2.1.13 **Auto Body Works**, a vehicle repair undertaking with its place of business located at Plot 1736 Industrial Area, Rundu Namibia;

- 2.1.14 **Auto Exec Body Works**, a vehicle repair undertaking with its place of business located at Erf. 225 Cooper Street, Windhoek Namibia;
- 2.1.15 **Auto Mech Panel Shop**, a vehicle repair undertaking with its place of business located at Main Road, Oshakati Namibia;
- 2.1.16 **Auto Perfect**, a vehicle repair undertaking with its place of business located at Erf 21 Hidipo Hamutenya Street, Industrial Area, Swakopmund, Namibia;
- 2.1.17 **AutoTech Namibia**, a vehicle repair undertaking with its place of business located at Namutoni Road, Industrial Area, Tsumeb Namibia;
- 2.1.18 **Auto Boss Panel Beaters**, a vehicle repair undertaking with its place of business located at Maxwell Street, Unit 54, Hyper Motor city, Windhoek Namibia;
- 2.1.19 **Auto Worx**, a vehicle repair undertaking with its place of business located at Bahnhof Street, Industrial Area, Tsumeb Namibia;
- 2.1.20 **Blitz Paneelkloppers**, a vehicle repair undertaking with its place of business located at Erf. 221, Industrial Area, Grootfontein, Namibia;
- 2.1.21 **Bluechip Panel Beaters**, a vehicle repair undertaking with its place of business located at Corner of Joules Street & Parsions Roads, Southern Industrial, Windhoek Namibia;
- 2.1.22 **Cartech Namibia**, a vehicle repair undertaking with its place of business located at Erf. 182 Industrial Street, Lafrenz Industrial Area, Windhoek, Namibia;
- 2.1.23 **Cilliers Body Works**, a vehicle repair undertaking with its place of business located at Schlosser Street Shop No.11, Industrial Area, Swakopmund Namibia;
- 2.1.24 **Cloetes Auto Body Repairs**, a vehicle repair undertaking with its place of business located at Erf 17, Block H, Rehoboth, Namibia;
- 2.1.25 **Coastal Auto Body Repairs**, a vehicle repair undertaking with its place of business located at Erf 15 Phillip Street, Industrial, Swakopmund Namibia;
- 2.1.26 **Colours Spray Painting and Panel Beating**, a vehicle repair undertaking with its place of business located at Erf 9 Messum Street, Suiderhof, Windhoek Namibia;
- 2.1.27 **CWV Auto Repairs**, a vehicle repair undertaking with its place of business located at Erf. 9 Kudu Gas Street, Northern Industrial Area, Windhoek Namibia;
- 2.1.28 **Deon's Garage**, a vehicle repair undertaking with its place of business located at Erf 1601 Hatting Street, Otjiwarongo, Namibia;
- 2.1.29 **Expert Garage**, a vehicle repair undertaking with its place of business located at Erf. No. 7 Duin Street, Narravile, Walvis Bay, Namibia;

- 2.1.30 **Extreme Body Works**, a vehicle repair undertaking with its place of business located at Erf. 7007 Hans Dietrich Genscher Street, Khomasdal, Windhoek Namibia;
- 2.1.31 **Fernando & Sons Body Works**, a vehicle repair undertaking with its place of business located at 109 Nickel Street, Prosperita, Windhoek Namibia;
- 2.1.32 **Fickies Body Works**, a vehicle repair undertaking with its place of business located at Erf. 1055 Bahnhof Street, Extension 1, Grootfontein, Namibia;
- 2.1.33 **Friedels Collision Repairs**, a vehicle repair undertaking with its place of business located at 7124 Hans-Dietrich Genscher Street, Khomasdal, Windhoek;
- 2.1.34 **Godino Auto Body Repairs**, a vehicle repair undertaking with its place of business located at C/O Tommie Muller & Anton Ruppert Streets, Northern Industrial Area, Windhoek, Namibia;
- 2.1.35 **HJ de Waal Body Works**, a vehicle repair undertaking with its place of business located at 769 Industrial Road, Luderitz, Namibia;
- 2.1.36 **HJ Feris Body Works**, a vehicle repair undertaking with its place of business located at Industrial Road, Orandjemund, Namibia;
- 2.1.37 **Hot Rod Pane Beaters**, a vehicle repair undertaking with its place of business located at Extension 16 Main Road, Ongwediva, Namibia;
- 2.1.38 **Jackson Body Works**, a vehicle repair undertaking with its place of business located at Main Road (opposite BH), Oshakati, Namibia;
- 2.1.39 **Jay Jay Body Repairs**, a vehicle repair undertaking with its place of business located at Erf. 14 Nguni Street, Northern Industrial Area, Windhoek, Namibia;
- 2.1.40 **Kalahari Auto Body Works**, a vehicle repair undertaking with its place of business located at Erf 904 Wolfaardt Street, Mariental, Namibia;
- 2.1.41 **Katima Break Down Services**, a vehicle repair undertaking with its place of business located at 585 Mpacha Road, Katima Mulilo, Namibia;
- 2.1.42 **Kotze Body Repairs**, a vehicle repair undertaking with its place of business located at 284 Cobalt Street, Prosperita, Windhoek, Namibia;
- 2.1.43 **Kuhn Panel beaters**, a vehicle repair undertaking with its place of business located at Erf. 224 River Street, Gobabis Namibia;
- 2.1.44 **Lifeline Investments**, a vehicle repair undertaking with its place of business located at Erf 10495 Bernabe De La Bat Street, Katutura, Windhoek, Namibia;
- 2.1.45 **Mariental Body Works**, a vehicle repair undertaking with its place of business located at Erf No. 646 Tait Street, Mariental, Namibia;
- 2.1.46 **Master Spray**, a vehicle repair undertaking with its place of business located at 21 Castle Street, Northern Industrial Area, Windhoek, Namibia;

- 2.1.47 **Mbelle Panel Beating**, a vehicle repair undertaking with its place of business located at Okatana Main Road, Ongwediva, Namibia;
- 2.1.48 **Monarch Panel Beaters**, a vehicle repair undertaking with its place of business located at 109 Rendsburger Street, Laffrenz Industrial Area, Windhoek, Namibia;
- 2.1.49 **Motor Technology Services**, a vehicle repair undertaking with its place of business located at 43 Mandume Ya Ndemufayo Avenue, Swakopmund;
- 2.1.50 **Northern Auto Body Repairs**, a vehicle repair undertaking with its place of business located at Erf No. 1234, Namutoni Road, Tsumeb, Namibia;
- 2.1.51 **OCC Panel Beaters**, a vehicle repair undertaking with its place of business located at Erf No. 10 Pastorie Street, Keetmanshop, Namibia;
- 2.1.52 **Omururoux Body Works**, a vehicle repair undertaking with its place of business located at Erf No.7, C/O Dwars/Skool Streets, Omaruru, Namibia;
- 2.1.53 **Ombalantu Automotive Engineering**, a vehicle repair undertaking with its place of business located at Erf 1225 Industrial Area, Ombalantu, Namibia;
- 2.1.54 **Ooshuizem Motors**, a vehicle repair undertaking with its place of business located at 18 Tal Street, Windhoek, Namibia;
- 2.1.55 **Opperman-Thiels Auto Body**, a vehicle repair undertaking with its place of business located at 5 Walter Street, Southern Industrial Area, Windhoek, Namibia;
- 2.1.56 **Otjiwarongo Panel beaters**, a vehicle repair undertaking with its place of business located at Holtzhausen St, Portion 26/24, Otjiwarongo, Namibia;
- 2.1.57 **Polka Dot Auto Body**, a vehicle repair undertaking with its place of business located at 103 Martin Neib Street, Okahandja, Namibia;
- 2.1.58 **Poolman Motors**, a vehicle repair undertaking with its place of business located at 101 Martin Neib Ave, Okahandja, Namibia;
- 2.1.59 **Potties Mechanical and Panelbeating**, a vehicle repair undertaking with its place of business located at 20 Reivelo Street, Gobabis, Namibia;
- 2.1.60 **Pro Engineering- Kaizen Auto (Dunedine Auto Repairs)**, a vehicle repair undertaking with its place of business located at Industrial Area, Rundu, Namibia;
- 2.1.61 **Professional Vehicle Repairs-PVR**, a vehicle repair undertaking with its place of business located at Erf. 5566, Elyambala Street, Ongwediva, Namibia;
- 2.1.62 **PZN Panel beaters and Spraypaynters CC**, a vehicle repair undertaking with its place of business located at C/O Anton Ruppert & Tommie Muller Street, Northern Industrial Area, Windhoek, Namibia;
- 2.1.63 **Rabes Body Repairs**, a vehicle repair undertaking with its place of business located at 19 Albert Wessels Street, Northern Industrial Area, Windhoek, Namibia;

- 2.1.64 **Retief Panel beaters-JR Panel beaters**, a vehicle repair undertaking with its place of business located at 76 Cathedral Street, Keetmanshop, Namibia;
- 2.1.65 **Ree-Ree Field Services CC- Panel beaters & Spraypainters Namibia**, a vehicle repair undertaking with its place of business located at Langerheinrich Crescent, Gate Way Industrial Park, Walvis Bay, Namibia;
- 2.1.66 **Rhino Body Works**, a vehicle repair undertaking with its place of business located at NDC Complex, Shop. 16, Ondangwa, Namibia;
- 2.1.67 **Robbs Motors**, a vehicle repair undertaking with its place of business located at 8 MAIN Street, Karasburg, Namibia;
- 2.1.68 **Rubens Perfect Panel beaters**, a vehicle repair undertaking with its place of business located at 34 Palladium Street, Prosperita, Windhoek, Namibia;
- 2.1.69 **Rupping Body Works (Pty) Ltd**, a vehicle repair undertaking with its place of business located at 8 Andimba Toivo Ya Toivo Street, Windhoek, Namibia;
- 2.1.70 **Salina Panelbeating**, a vehicle repair undertaking with its place of business located at Main Road, Onethindi, Ondangwa, Namibia;
- 2.1.71 **Shape A Auto**, a vehicle repair undertaking with its place of business located at 3rd Street, Erf 9 Walvis Bay, Namibia;
- 2.1.72 **Speedline Panel beaters**, a vehicle repair undertaking with its place of business located at 39 Calcium Street, Prosperita, Windhoek, Namibia;
- 2.1.73 **Spes Bona Auto Repairs**, a vehicle repair undertaking with its place of business located at Kudagas Street, Northern Industrial, Windhoek, Namibia;
- 2.1.74 **Spraytech Body Works**, a vehicle repair undertaking with its place of business located at 8th Street, Industrial Area Erf 7, Walvis Bay, Namibia;
- 2.1.75 **Star Body Works**, a vehicle repair undertaking with its place of business located at 4 Ruhr Street, Northern Industrial Area, Windhoek, Namibia;
- 2.1.76 **Swakop Body Works CC**, a vehicle repair undertaking with its place of business located at 3 Watt Street, Industrial Area, Swakopmund, Namibia;
- 2.1.77 **TE Auto Repairs and Body Works**, a vehicle repair undertaking with its place of business located at Erf. 10460 Ber Nade de la Bat Street, Katutura, Windhoek, Namibia;
- 2.1.78 **Valletta Engine and Body Repairs**, a vehicle repair undertaking with its place of business located at Erf. 100 Danzing Street, Lafrenz Industrial, Windhoek, Namibia;
- 2.1.79 **Van Zyl Body Works**, a vehicle repair undertaking with its place of business located at Erf. 5 Iron Street, Otjiwarongo, Namibia and
- 2.1.80 **Zambezi Auto City**, a vehicle repair undertaking with its place of business located at Erf 535, Trans Caprivi High Way, Katima Mulilo, Namibia.

2.2 Undertakings against whom the Commission considers to seek relief

The Commission considers to seek relief from Court against the following undertakings:

- 2.2.1 **Santam Namibia Ltd**, a short-term insurance company with its place of business located at the corner of Robert Mugabe & Lazerette Street, Tenbergen Village, Windhoek, Namibia;
- 2.2.2 **Alexander Forbes Insurance Company Ltd**, a short-term insurance company with its place of business located at No 27 Fidel Castro Street, Alexander Forbes Building, Windhoek, Namibia;
- 2.2.3 **Hollard Insurance Company Ltd**, a short-term insurance company with its place of business located at the corner of Jan Jonker & Thoror Streets, Jan Jonker Height Building, Windhoek, Namibia;
- 2.2.4 **Old Mutual Short-Term Insurance Company Ltd**, a short-term insurance company with its place of business located at No. 223 Independence Avenue, Mutual Tower, Windhoek, Namibia;
- 2.2.5 **Outsurance Insurance Company of Namibia Ltd**, a short-term insurance company with its place of business located at the corner of Jan Jonker & Robert Mugabe Streets, 2nd Floor, Maerua Office Block, Windhoek, Namibia;
- 2.2.6 **Phoenix Assurance Namibia Ltd**, a short-term insurance company with its place of business located at Lindquist Street No. 4, Windhoek, Namibia; and
- 2.2.7 **Quanta Insurance Limited (now known as Momentum Short Term Insurance Ltd)**, a short-term insurance company with its place of business located at the Feld Street, Windhoek, Namibia.

2.3 Where appropriate, the undertakings listed in paragraphs 2.3.1 to 2.3.7 above will be referred to as “Respondents” or “insurance companies” or “insurers” herein.

2.4 These insurance companies are undertakings trading in competition and are in a horizontal relationship within the meaning of the Competition Act.

3. CONDUCT

3.1 As part of their business, panel beaters provide repair services to vehicles including those insured by insurance companies. Insurance companies on the other hand are involved in, *inter alia*, the defraying of funds for repairs done by panel beaters on behalf of their policyholders. The Commission’s investigation found that since 2009, insurance companies have been setting maximum mark-ups that panel beaters should charge for repairs where part replacement is required. The Commission’s investigation has further found that on top of setting maximum mark-ups on parts, insurance companies are also engaged in the setting of maximum rates that panel beaters should charge for their labour. Investigations conducted by the Commission further reveal that the insurance companies come together to discuss and agree on maximum mark-ups rates for panel beaters and communicate these rates amongst themselves.

4. REASONS FOR INFRINGEMENT

- 4.1 The imposing of maximum mark-ups and labour rates amount to restrictive agreements or concerted practices between parties in a horizontal relationship (insurance companies) which prevent or substantially lessen competition by means of the fixing of prices and trading conditions as envisaged in terms of section 23(1) read with section 23(2)(a) and 23(3)(a) of the Competition Act based on the following grounds:
- 4.1.1 The setting of maximum mark-ups and labour rates by the insurance companies amounts to price fixing and is anti-competitive since the maximum price provides a focal point for panel beaters to gravitate towards maximising their prices and eventually their profits regardless of their input costs.
- 4.1.2 Under normal competitive conditions, insurance companies will consider the lowest substantial quotation from a group of panel beaters. Panel beaters on the other hand, will try to undercut each other as low as possible to make sure that they get the job. In doing so, panel beaters would employ innovative ways to reduce cost and improve efficiency. Once the maximum mark ups and rates are set, innovation stops and even those with the lowest costs will charge the maximum mark ups and rates, and gain abnormal profit margins to the detriment of the insured or policyholder.
- 4.1.3 The setting of mark ups and labour rates, which in some periods has been identical for different insurance companies, gives rise to a finding that there is an agreement and or a concerted practice between insurance companies since, despite the bare denials by insurance companies and claims that panel beaters' rates and mark ups are set independently, the overwhelming similarities and in some instances identical rates imposed by insurance companies points to the existence of an agreement and/or a concerted practice amongst insurance companies regarding the setting of rates or mark ups.

5. RELIEF

The details of the relief that may be sought in proceedings that may be instituted in accordance with section 38 of the Competition Act are as follows:

- 5.1 Declaring that the insurance companies have contravened section 23 (1) read with section 23 (2) (a) and section 23 (3) (a) of the Competition Act;
- 5.2 Ordering the insurance companies to cease with the conduct in question;
- 5.3 Restraining the insurance companies from engaging in the conduct in question;
- 5.4 Seeking an appropriate pecuniary penalty against the insurance companies in terms of section 53(1)(a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
- 5.5 Ordering that the insurance companies pay the costs of the proceedings; and
- 5.6 Such further and/or alternative relief as the Court may consider appropriate.

6. CONSENT AGREEMENT

While emphasising that a final decision has not been made in this matter, the Commission notes the provisions of section 40 of the Competition Act and confirms its willingness to engage with any of the insurance companies to settle this matter and to avoid proceedings under section 38 of the Competition Act.

NAMIBIAN COMPETITION COMMISSION

No. 264

2019

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: RIO TINTO NAMIBIA HOLDINGS LIMITED // CHINA NATIONAL URANIUM
CORPORATION (“CNUC”) IN RELATION TO RÖSSING URANIUM LIMITED (“RUL”)
CASE NO.: 2018DEC0048MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission received notification of the proposed merger on 19 December 2018.
2. Please note that the Commission **approved the proposed merger with conditions.**
3. The Commission’s decision is based on the following grounds:

Although the proposed transaction is unlikely to result in the prevention or substantial lessening of competition or in any undertaking acquiring or strengthening a dominant position, it does, give rise to significant public interest concerns. Given the above and in order to safeguard employment, local procurement and to maintain benefits currently derived in terms of taxes and royalties, the Commission found it necessary to approve the acquisition of Rio Tinto Namibian Holdings Ltd by China National Uranium Corporation Ltd subject to the following conditions:

Note: Unless specifically provided for herein, capitalised terms used herein bear the meanings ascribed thereto in paragraph 6 (*Definitions*) of this notice.

3.1 *Employment:*

- 3.1.1 *Subject to paragraphs 4.1.1 to 4.1.5 (both inclusive) below, there shall be no Merger Specific Retrenchments of employees of RUL for a period of 2 (two) years from the Implementation Date;*
- 3.1.2 *RUL shall maintain a ratio of at least 95% (ninety five percent) local employees to 5% foreign employees until the expiry of LOM – this ratio shall be determined based on an average percentage calculated over the applicable Reporting Period; and*
- 3.1.3 *RUL shall maintain a ratio of at least 95% (ninety five percent) local employees to 5% foreign employees, at the level of Management until the expiry of LOM – this ratio shall be determined based on an average percentage calculated over the applicable Reporting Period and shall at all relevant times be calculated in relation to the Management Compliment.*

3.1.4 *RUL shall not employ any non-Namibian person at the level of Management on any basis other than on a two-year fixed term contract.*

3.1.5 *The current terms and conditions of employment of the employees of RUL shall not be altered to be less favourable post-merger.*

3.2 *Procurement*

3.2.1 *Without the consent of the Commission, RUL shall not implement any changes to its 30 July 2013 Procurement Policy which will have the effect of providing for less favourable terms to local suppliers until the expiry of LOM.*

3.2.2 *Notwithstanding condition 3.2.1 and to benefit local Namibian SME's, for procurement of any services, goods, or products below a value of N\$250 000 per project the following shall apply*

3.2.2.1 *The merged undertaking shall procure a minimum of 80% (eighty percent) of any such services, goods or products from companies which:*

3.2.2.2 *are majority Namibian owned and registered; and*

3.2.2.3 *employ a minimum of 75% Namibian citizens*

3.3 *Transfer pricing:*

3.3.1 *RUL shall conduct all transactions with a Connected Person in accordance with the arm's-length principle and furthermore in accordance with section 95A of the Income Tax Act No 24 of 1981 (as amended, and as may be amended from time to time) read with Practice Note No 2 of 2006 and any determination, directive, rules, or regulations which may become applicable in this regard.*

3.3.2 *If and when RUL is audited by the Department of Inland Revenue in respect of allegations of transfer pricing, as provided for in section 95A of the Income Tax Act 24 of 1981, RUL shall submit the outcome of such audit to the Commission within 10 (ten) business days of the report becoming available to RUL.*

3.4 *Future notification:*

3.4.1 *Any member of the Acquiring Group which is desirous of acquiring a controlling interest in a company which is the holder of an exclusive prospecting licence or mining licence (target undertaking) ("Proposed Transaction"), and the Proposed Transaction's thresholds falls below the thresholds provided for in Government Notice 307 of 21 December 2015 published under the Competition Act, shall notify the Commission of the Proposed Transaction before the implementation thereof.*

4. *Compliance Procedures, Monitoring and Reporting Obligations*

4.1 *Merger Specific Retrenchments*

- 4.1.1 *In the event that RUL identifies any potential Merger Specific Retrenchments to be implemented within 2 (two) years from the Implementation Date, it will notify the Commission thereof at least one month before the intended date of the applicable retrenchments. RUL's written notification to the Commission in this regard must include the following:*
- 4.1.1.1 *a list of employees likely to be affected by the Merger Specific Retrenchments;*
- 4.1.1.2 *the number and categories of employees likely to be affected by the Merger Specific Retrenchments, as well as their job titles;*
- 4.1.1.3 *the reasons for the retrenchments;*
- 4.1.1.4 *whether the Merger Specific Retrenchments could be avoided by appointing the applicable employees identified for retrenchments to other positions within RUL; and*
- 4.1.1.5 *the intended date of the Merger Specific Retrenchments.*
- 4.1.2 *Subject to 4.1.3 and 4.1.4 below, the Commission must, within 10 (ten) business days of receipt of the written notification to it as provided for in paragraph 4.1.1 above, indicate to RUL, in writing:*
- 4.1.2.1 *whether it objects to the Merger Specific Retrenchments and the reasons for such objection; or*
- 4.1.2.2 *that it does not object to the Merger Specific Retrenchments.*
- 4.1.3 *In so far as the Commission requires any further information from RUL in relation to a Merger Specific Retrenchment, it shall furnish RUL with a complete list of all information and documents so required by it, provided that the number of requests for information provided for in this regard shall at all times be limited to 2 (two).*
- 4.1.4 *In the event that the Commission requires further information in respect of the Merger Specific Retrenchments as provided for in 4.1.3 above, it will, within 10 (ten) business days of receiving such information and documents from RUL, notify RUL, in writing, as to its position on the Merger Specific Retrenchments, as provided for in 4.1.2.1 or 4.1.2.2 above, as may be applicable.*
- 4.1.5 *The Commission will not unreasonably object to or delay its communication to RUL on the Merger Specific Retrenchments.*
- 4.2 *Non-Merger Specific Retrenchments*
- 4.2.1 *For the sake of transparency, in the event that RUL identifies any Non-Merger Specific Retrenchments, within 2 years from the Approval Date, it will inform the Commission of such Non-Merger Specific Retrenchments, at least one month before the intended date on which the retrenchments are to be implemented. RUL's notification to the Commission in this regard shall contain the following information:*

- 4.2.1.1 *a list of employees likely to be affected by the Non-Merger Specific Retrenchments;*
- 4.2.1.2 *the number and categories of employees likely to be affected by the Non-Merger Specific Retrenchments, as well as their job titles;*
- 4.2.1.3 *an explanation of the reasons that give rise to the Non-Merger Specific Retrenchments (including changes to operational requirements);*
- 4.2.1.4 *a description of the steps taken by RUL to avoid the Non-Merger Specific retrenchments; and*
- 4.2.1.5 *the intended date of the Non-Merger Specific Retrenchments.*

4.3 *Other Conditions*

- 4.3.1 *In order to enable the Commission to sufficiently monitor compliance with the conditions as set out in paragraphs 3.1, 3.2, 3.3 and 3.4 above RUL shall provide the Commission with merger compliance reports for the applicable Reporting Period, reporting on its compliance with the aforementioned conditions, and more specifically as provided for and to the extent required below.*
- 4.3.2 *In respect of employment, RUL shall submit its compliance report, at the same time of RUL reporting to the Employment Equity Commission on its compliance with RUL's affirmative action employment plan.*
- 4.3.3 *The information to be contained in the merger compliance report referred to in 4.3.2 above, shall be a copy of the Affirmative Action Report of RUL, as submitted to the Office of the Employment Equity Commissioner from time to time.*
- 4.3.4 *In respect of procurement, RUL shall on annual basis provide to the Commission:*
 - 4.3.4.1 *The procurement policy;*
 - 4.3.4.2 *A list of suppliers including the following details:*
 - 4.3.4.2.1 *Name of supplier;*
 - 4.3.4.2.2 *company registration;*
 - 4.3.4.2.3 *ownership;*
 - 4.3.4.2.4 *value of procurement.*

4. **Change in Circumstances:**

Any member of the Acquiring Group shall from time to time be entitled, upon Good Cause, to make proposal(s) to the Commission, to the extent that the Commission is empowered in terms of the Competition Act as amended, to consent to the waiver, relaxation, modification and/or substitution of one or more of the conditions set out herein, which consent shall not be unreasonably withheld or delayed.

5. **Confidentiality**

The Recipient shall maintain all Confidential Information in strict trust and shall not disclose any Confidential Information to any third party, except as may be required by law or regulation or legal or judicial process. The Recipient may use Confidential Information only to the extent required to monitor compliance with the Conditions. In particular and without prejudice to the foregoing, the Recipient shall not use any Confidential Information in furtherance of, or for any purpose other than monitoring the compliance of these conditions.

6. **Definitions**

“Commission” means the Namibian Competition Commission;

“Competition Act” means the Competition Act 2 of 2003;

“Confidential Information” means trade, business or industrial information that belongs to an undertaking, has a particular economic value and is not generally available to or known by others;

“Good Cause” shall have its normal meaning as interpreted under the Competition Act and the Common law, save that ‘good cause’ shall additionally mean that the circumstances giving rise to the applicable member of the Acquiring Group’s request in terms change in circumstances provision of this notice, shall require that, the circumstances giving rise to the request could not reasonably have been foreseen by the applicable member of the Acquiring Group at the time of the merger and could not reasonably be mitigated or addressed in another matter;

“Employee” includes all persons employed on a temporally, fixed term or permanent basis;

“LOM” means the current life of the RUL mine, calculated from the Approval Date, and expiring on the actual date determined by RUL to close the mine, alternatively, 2025, whichever is sooner;

“Management” means staff members of RUL responsible for controlling or administering a group of employees within RUL, or those that perform key functions without the regular supervision by others (i.e. heads of departments for the factory, production, human resources, quality control, supervisors, shift managers, and technical) and any employee who does not form part of RUL’s recognized bargaining unit;

“Management Compliment” means the maximum number of employees which RUL could appoint to the level of Management;

“Merger Specific Retrenchment(s)” means a retrenchment reasonably led by an imminent change in policy solely related to the merger and such a change in policy could not be a rational or lawful response to economic, market or operational conditions that could equally have been embarked on in the absence of the merger. For the avoidance of doubt, Merger Specific Retrenchments do not include: any voluntary separation, resignation, dismissal as a result of a disciplinary process and voluntary early retirement; any other retrenchment on grounds recognized in law, including any retrenchment on operational grounds which are not related to the merger.

“Non-Merger Specific Retrenchments” means all retrenchments, other than Merger Specific Retrenchments;

“Procurement Policy” means the procurement, sourcing and tender policy communicated by RUL to the Commission on 10 June 2019 indicating an effective date of 30 July 2013;

“Recipient” for purposes of the confidentiality undertaking provided for in paragraph 5 of this notice, means the Commission; and

“Reporting Period” means each period of 12 (twelve) months or proportion thereof (in relation to the first period and last period on which RUL is to report), commencing on the Approval Date and expiring on LOM;

“RUL” means Rössing Uranium Limited.

7. **Interpretation**

“days” shall be construed as calendar days unless qualified by the word “business”, in which instance a **“business day”** will be any day other than a Saturday, Sunday or a recognised public holiday in Namibia; and

“notice”, “this notice”, “herein”, “hereof” and “hereunder” may be used interchangeably and each means the notice of determination of the merger as set out in this document.

Where any number of days is prescribed in this notice, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION
