



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 9 June 2015

No. 5756

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 238

2015

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT: NAMIBIAN COMPETITION COMMISSION // SANLAM NAMIBIA LIMITED, SANLAM LIFE NAMIBIA LIMITED, PROFESSIONAL PROVIDENT SOCIETY INSURANCE COMPANY LIMITED (SOUTH AFRICA) AND PROFESSIONAL PROVIDENT SOCIETY INSURANCE COMPANY NAMIBIA LIMITED
CASE NUMBER: 2011MAR0014INV

Competition Act, 2003 (Act No. 2 of 2003)
(Section 41, Rule 20(1))

1. The Commission initiated complaints and started investigations against the above named respondents during November 2012 and June 2013 respectively. However, before the Commission could issue a notice of a proposed decision in accordance with Section 36 of the Competition Act, 2003 (Act No. 2 of 2003), the respondents approached the Commission for an offer to settle in accordance with section 40 of the Competition Act, 2003 dated 01 November 2013.
2. The Commission gives notice that it intends to submit the attached consent agreement with the following undertakings:

- 2.1 Sanlam Namibia Limited;
 - 2.2 Sanlam Life Namibia Limited;
 - 2.3 Professional Provident Society Insurance Company Limited (South Africa) and
 - 2.4 Professional Provident Society Insurance Company Namibia Limited to the Court for confirmation as an order of the Court as contemplated in section 40(1) of the Act.
3. The nature of the conduct that is the subject of the consent agreement is:
- (a) directly or indirectly fixing purchase or selling prices in contravention section 23(1), read with section 23(2)(a) of the Act;
 - (b) dividing markets by allocating customers, suppliers, areas or specific types of goods or service in contravention of section 23(1) read with section 23(2)(b) of the Act; and
 - (c) limiting controlling production of services and/or products in contravention of section 23(1), read with section 23(3)(e) of the Act.

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

**IN THE HIGH COURT OF NAMIBIA
(Main Division)**

CASE NO.:

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

SANLAM NAMIBIA LIMITED

First Respondent

SANLAM LIFE NAMIBIA LIMITED

Second Respondent

**PROFESSIONAL PROVIDENT SOCIETY INSURANCE
COMPANY LIMITED (SOUTH AFRICA)**

Third Respondent

**PROFESSIONAL PROVIDENT SOCIETY INSURANCE
COMPANY NAMIBIA LIMITED**

Fourth Respondent

**CONSENT AGREEMENT BETWEEN THE NAMIBIAN COMPETITION
COMMISSION AND SANLAM NAMIBIA LIMITED, SANLAM LIFE NAMIBIA
LIMITED, PROFESSIONAL PROVIDENT SOCIETY INSURANCE COMPANY
LIMITED (SOUTH AFRICA) & PROFESSIONAL PROVIDENT SOCIETY INSURANCE
COMPANY NAMIBIA LIMITED IN RESPECT OF AN INVESTIGATION PERTAINING
TO ALLEGED CONTRAVENTION OF SECTION 23 (1) READ WITH SECTIONS 2(3)(a),
23(3)(b) AND 23(3)(e) OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)**

WHEREAS the Namibian Competition Commission initiated two complaints and started an investigation into the conduct of Sanlam Namibia Limited, Sanlam Life Namibia Limited, Professional Provident Society Insurance Company Limited (South Africa) and Professional Provident Society Insurance Company Namibia Limited (hereinafter referred to as the “parties”) for alleged contravention of section 23(1) read with section 23(3)(a), 23(3)(b) and 23(3)(e) of the Competition Act, 2003 (Act No. 2 of 2003) (hereinafter the “Act”).

AND WHEREAS the parties, without admitting liability or a contravention of the Act as set out above and in settlement of the investigation by the Namibian Competition Commission under case

number:2011MAR0014INV, have decided to enter into a Consent Agreement as contemplated in section 40(1) of the Act.

NOW THEREFORE the Namibian Competition Commission and the parties 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. **“Complaints”** means the two complaints initiated by the Namibian Competition Commission, dated 3 February 2013 and 18 June 2013 under case number 2011MAR0014INV, in terms of Rule 14 of the Rules made under the Act as promulgated in Government Notice No. 54 of 2008, General Notice No. 41;
- 1.4. **“Consent Agreement”** means this Consent Agreement, duly signed and concluded between the Commission and the parties, as contemplated in section 40 (1) of the Act;
- 1.5. **“Investigation”** means the investigation into the Complaints started by the Commission in terms of section 33 (1) of the Act;
- 1.6. **“Marketing Agreement”** means the agreement entered into between Sanlam Namibia Limited, Sanlam Life Namibia Limited, Professional Provident Society Insurance Company Limited (South Africa) and Professional Provident Society Insurance Company Namibia Limited during June 2011 and September 2011; and
- 1.7. **“Parties”** means:
 - 1.7.1. **Sanlam Namibia Limited** a company duly incorporated in accordance with the laws of the Republic of Namibia;
 - 1.7.2. **Sanlam Life Namibia Limited** a limited company duly incorporated in accordance with the laws of the Republic of Namibia;
 - 1.7.3. **Professional Provident Society Insurance Company Limited (South Africa)**, a company duly incorporated in accordance with the laws of the Republic of South Africa; and
 - 1.7.4. **Professional Provident Society Insurance Company Namibia Limited** a company duly incorporated in accordance with the laws of the Republic of Namibia.

2. NO ADMISSION OF LIABILITY

The Consent Agreement shall not require any of the parties to consent or admit that they have contravened any section of the Act but the parties acknowledge that the cause of the Consent

Agreement is the desire of the Commission and the parties to amicably and cooperatively resolve the Commission's investigation under case number: 2011MAR0014INV.

3. CESSATION OF MARKETING AGREEMENT

- 3.1** The parties may continue to implement the Marketing Agreement for a period of one year but must have ceased implementation of the Marketing Agreement at the expiry of one year from the date of confirmation of the Consent Agreement as an order of the Court.
- 3.2** The parties undertake to cooperate with the Commission in future by providing proof that the Marketing Agreement has ceased to be in operation within a year of the Consent Agreement being confirmed as an order of the Court.
- 3.3** On and after the expiry of the one year period, upon request by the Commission, and within a reasonable time, the parties shall provide the Commission with documentary evidence of the cessation of the Marketing Agreement.

4. AGREEMENT CONCERNING FUTURE CONDUCT

- 4.1** The parties will prepare a statement summarising the content of the Consent Agreement to their employees who are in management within 30 days of the date of the confirmation the Consent Agreement as an order of court;
- 4.2** Refrain from engaging in conduct contrary to the provisions of Part I of Chapter 3 of the Act;
- 4.3** The parties will develop and implement a compliance programme to ensure that their employees, management and directors do not engage in any conduct that is prohibited in terms of the Act; and
- 4.4** A copy of the compliance programme will be supplied to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order of the Court.

5. PENALTY

- 5.1** The parties will pay a pecuniary penalty of N\$5 464 791.45, jointly and severally the one paying the others to be absolved.
- 5.2** The parties will pay the amount in 2 equal instalments within 2 years after the Consent Agreement is confirmed by the Court as an order of the Court, with the first payment being made within 30 days of the Consent Agreement being made an order of the Court and the second instalment within 12 months after payment of the first instalment.
- 5.3** The parties shall remit payment of the pecuniary 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

- 5.4** The penalty will be paid over by the Commission into the State Revenue Fund in accordance with the provisions of section 53 (5) of the Act.

6. COURT ORDER

- 6.1** The settlement is recorded in this Consent Agreement to be signed between the parties and the Commission.
- 6.2** The settlement is conditional upon conclusion of the Consent Agreement and confirmation thereof by the Court in terms of section 40 of the Act.
- 6.3** Each party will carry its own costs of the application to the Court for confirmation of the settlement agreement.

7. FULL AND FINAL SETTLEMENT

The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of, and shall conclude, all proceedings between the Commission and the parties in relation to the Commission's Complaints and Investigation.

SIGNED at WINDHOEK on this 8th September 2014

F. HANGULA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION
