



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 5 June 2019

No. 6926

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 151

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 Hollard on 4 April 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 Hollard 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. Hollard contends, however that its conduct could only have had an effect of transgressing the provisions of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act, if and when it had succeeded in reaching an agreement with the panel beaters.
 - 4.3. Hollard admits that its conduct constitutes an unintended contravention of section 23 of the Act.
 - 4.4. The Commission and Hollard 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**

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

APPLICANT

and

HOLLARD INSURANCE COMPANY OF 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 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 “**Investigation**” means the investigation initiated against the Respondent by the Commission in terms of section 33 (1) of the Act;
- 1.5 “**Respondent**” means **Hollard Insurance Company of Namibia Limited**, a company duly incorporated in accordance with the laws of the Republic of Namibia.

2. CONDUCT

- 2.1 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 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.

2.2 The Respondent contends however, that its Conduct could only have had an effect of transgressing the provisions of section 23(1) read with sections 23(2)(a) and 23(3) (a) of the Act, if and when it succeeded in reaching an agreement with the panel beaters.

2.3 The Commission and the Respondent have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

3. ADMISSION OF LIABILITY

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

4. CESSATION OF CONDUCT

4.1 The Respondent records it has already ceased such Conduct and shall take all steps to ensure that cessation of the Conduct remains in place 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 date of confirmation of the Consent agreement as an order of Court, and subsequently at any future date if and when on reasonable grounds 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 **NS\$ 500 000.00 (Five million, five hundred thousand 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 if the Respondent for whatever reason repudiates the Consent Agreement or opposes the Commission's application for confirmation of the Consent Agreement by Court, provided that the affidavit filed in support of the application to make this Consent Agreement an order of Court is approved by the Respondent.

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.
