



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GENERAL NOTICE

No. 328 Namibian Competition Commission: Notice in terms of Section 41 of the Competition Act, 2003 1

General Notice

NAMIBIAN COMPETITION COMMISSION

No. 328

2022

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003

The Namibian Competition Commission, in terms of Section 41 of the Competition Act, 2003 (Act No. 2 of 2003), herewith gives notice that it intends to submit to the High Court of Namibia for confirmation as an order of the Court, a consent agreement entered into with Phoenix Assurance Namibia Limited on 20 June 2022.

Section 40 of the Competition Act mandates the Namibian Competition Commission to enter into settlement agreements with an undertaking or undertakings concerned, setting out the terms to be submitted by the Commission by application to the Court for confirmation as an order of the Court.

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 2016OCT-0008COMP and case number.: HC-MD-CIV-ACT-OTH-2022/00404 in respect of Phoenix Assurance Namibia Limited.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION

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 Old Mutual Short-Term Insurance Company Ltd (“OMSIC”);
 - 1.2 Outsurance Insurance Company Namibia Ltd (“Outsurance”);
 - 1.3 Phoenix Assurance Namibia Ltd (“Phoenix”);
 - 1.4 Momentum Short-Term Insurance Ltd (previously known as Quanta Insurance Ltd (“Momentum”);

(jointly referred to as “the Defendants”).
2. The Commission during April 2018 gave notice of its preliminary decision that section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Defendants. During August 2018, the Commission convened a conference, in terms of section 37 of the Act at which all the above-mentioned undertakings, with the exception of Phoenix, made oral representations to the Commission in respect of the investigation against them. During August 2019, the Commission notified the Defendants that, following its investigation and consideration of all representations, including those made to it in accordance with the provisions of section 36 and 37 of the Competition Act, the Commission had decided to institute proceedings against them in terms of section 38 of the Competition Act for setting maximum mark-ups and labour rates that panel beaters could charge for the repair of insured vehicles, in contravention of section 23(1), read with section 23(2)(a) and section 23(3)(a), of the Competition Act. The Commission duly published these notices in Government Gazette No. 6989, General Notice No. 355 of 2019, on 5 September 2019.
3. The Commission instituted action against the Defendants in the High Court of Namibia under Case No.: HC-MD-CIV-ACT-OTH-2022/00404 during February 2022.
4. The Commission and Phoenix during June 2022 engaged in settlement negotiations and on 20 June 2022 entered into a consent agreement.
5. The Commission accordingly gives notice that it intends to submit the attached consent agreement with Phoenix to the High Court of Namibia for confirmation as an order of the Court as contemplated in section 40(1) of the Act.
6. The nature of the conduct that is the subject of the consent agreement is:
 - 6.1. The Commission’s investigation found that the Defendants 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.
 - 6.2. Phoenix admits that its conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act.
 - 6.3. The Commission and Phoenix have therefore agreed to settle the matter on the terms and conditions herein, in full and final settlement.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Plaintiff

and

PHOENIX ASSURANCE NAMIBIA LIMITED

Defendant

**CONSENT AGREEMENT BETWEEN THE PLAINTIFF ON THE ONE HAND AND
THE DEFENDANT ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION
PERTAINING TO AN ALLEGED CONTRAVENTION OF SECTION 23
OF THE COMPETITION ACT NO. OF 2003**

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

AND WHEREAS the Commission has instituted action against the Defendant in the High Court of Namibia under Case No.: HC-MD-CIV-ACT-OTH-2022/00404 for the relief as set out in the particulars of claim dated 4 February 2022.

AND WHEREAS the Defendant defended the action.

AND WHEREAS the Defendant, in settlement of the investigation by the Commission under case number: 2016OCT0008COMP and the High Court proceedings under case number: HC-MD-CIV-ACT-OTH-2022/00404 has decided to enter into a Consent Agreement as contemplated in section 40(1) of the Act.

NOW THEREFORE the Commission and the Defendant 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 Defendant, as contemplated in section 40(1) of the Act.
- 1.4 “**Day(s)**” means calendar days.
- 1.5 “**High Court proceedings**” means the action proceedings initiated in the High Court of Namibia by the Commission against the Defendant under case number.: HC-MD-CIV-ACT-OTH-2022/00404 on 4 February 2022 wherein the Commission is the plaintiff and the Defendant is the fifth defendant.

1.6 **“Investigation”** means the investigation initiated against the Defendant by the Commission in terms of section 33(1) of the Act under case number 2016OCT0008COMP.

1.7 **“Defendant”** means **PHOENIX ASSURANCE NAMIBIA LIMITED**, company duly incorporated in accordance with the laws of the Republic of Namibia.

2. CONDUCT

2.1 The Commission’s investigation found that the Defendant 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.

3. ADMISSION OF LIABILITY

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

3.2 The Commission and the Defendant therefore agree to settle the investigation and High Court proceedings on the terms and conditions herein in full and final settlement.

4. CESSATION OF CONDUCT

4.1 The Defendant records that 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 Defendant will develop and implement a compliance programme on competition law in Namibia to ensure that its employees, management, directors or any other party acting on its behalf does 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 Defendant 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 Defendant 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 and shall provide the Commission with a copy thereof within (40) days of the date of the confirmation of this Consent Agreement as an order of the Court.

6.2 The Defendant 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 Defendant agrees to pay a total settlement amount in the sum of **N\$ 45 000.00 (Forty-Five Thousand Namibian dollars)** comprised as follows:
- 7.1.1 A pecuniary penalty of N\$30 000.00 (Thirty Thousand Namibian dollars); and
- 7.1.2 An additional amount of N\$15 000.00 (Fifteen Thousand Namibian dollars) for purposes of covering part of the Commission's costs arising from its investigation.
- 7.2 The amount becomes payable upon confirmation of this Consent Agreement as an order of the Court.
- 7.3 The Defendant 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 |
- 7.4 The pecuniary penalty will be paid over by the Commission into State Revenue Fund in accordance with the provisions of section 53(5) of the Act.

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 be without prejudice, and will not be used as evidence against the Defendant in any proceeding whatsoever.
- 8.2 Each Party will carry its own costs for all legal and incidental costs incurred in the High Court proceedings under case number.: HC-MD-CIV-ACT-OTH-2022/00404, including the costs for the confirmation of the Consent Agreement as an order of Court.
- 8.3 Notwithstanding the above, if either of the parties for whatever reason repudiate the Consent Agreement or the Defendant opposes the Commission's application for confirmation of the Consent Agreement by Court, the other party shall carry that party's costs in respect of the confirmation of this Consent Agreement as an order of Court.

9. FULL AND FINAL SETTLEMENT

- 9.1 The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Investigation and the High Court proceedings and shall conclude the proceedings under case number 2016OCT0008COMP and case number.: HC-MD-CIV-ACT-OTH-2022/00404 in respect of the Defendant.
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