



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 206

2023

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 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 Court for confirmation as an order of the Court, a consent agreement entered into with Santam Namibia Ltd on **23 March 2023**.

Section 40 of the Competition Act mandates the Namibian Competition Commission to enter into settlement agreements with the 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 2017JAN0002COMP and case number.: HC-MD-CIV-ACT-OTH-2021/03064 in respect of Santam Namibia Limited.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER
SECRETARY TO THE COMMISSION**

**NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
NAMIBIAN COMPETITION COMMISSION // SANTAM NAMIBIA LIMITED AND 7 OTHERS**

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

CASE NUMBER: 2017JAN0002COMP

1. The Commission on or about 30 January 2017 and 14 March 2018 initiated an investigation against:
 - 1.1 Santam Namibia Ltd (“Santam”);
 - 1.2 Hollard Insurance Company of Namibia Ltd (“Hollard”);
 - 1.3 Old Mutual Short-Term Insurance Company Ltd (“OMSIC”);
 - 1.4 Momentum Short-Term Insurance Ltd (previously known as Quanta Insurance Ltd) (“Momentum”);
 - 1.5 Greg’s Motor Spares (Pty) Ltd (“Greg’s”);
 - 1.6 Perfect Glass CC (“Perfect Glass”); and
 - 1.7 PG Glass Namibia (Pty) Ltd (“PG Glass”) (jointly referred to as “the Defendants”).
2. The Commission on or about 10 July 2018 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(b) and 23(3)(e) and 23(3)(f) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Defendants. On or about 18 December 2019, the Commission issued a Form 7 Notice advising the Defendants that it planned to take action in terms of section 38 of the Act and providing reasons for the Commission’s decision. The Form 7 Notice was published in the Government Gazette on 31 December 2019.
3. In settlement of the investigation by the Commission, the Commission and Santam on 23 March 2023 entered into a Consent Agreement in terms of section 40 of the Act. The Commission accordingly 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 First Defendant has contravened section 23(1) read with sections 23(2)(b) and 23(3)(e) and 23(3)(f) of the Act by entering into exclusive agreements which affords preferential rights, sole distribution rights, waiving of excess fees and rebates to the Defendants.

- 4.2 Santam disputes the factual findings and interpretation of the Act by the Commission, however for the purpose of settlement 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

11 April 2023

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Plaintiff

and

SANTAM NAMIBIA LIMITED

1st Defendant

CONSENT AGREEMENT BETWEEN THE PLAINTIFF ON THE ONE HAND AND THE
FIRST DEFENDANT ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION
PERTAINING TO AN ALLEGED CONTRAVENTION OF SECTION 23(1) AS
READ WITH SECTIONS 23(2)(b), 23(3)(e) AND 23(3)(f) OF THE
COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)

1. PREAMBLE

WHEREAS the Plaintiff upon the receipt of information and consideration of such information, initiated an investigation under case number: 2017JAN0002COMP into the alleged conduct of the Defendants, for alleged contravention of section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Competition Act 2 of 2003 (hereinafter referred to as “the Competition Act”).

AND WHEREAS the Plaintiff instituted legal proceedings against the Defendants in the above matter in the High Court of Namibia under case number **HC-MD-CIV-ACT-OTH-2021/03064**, following the outcome of the investigation and sought relief as set out in the Plaintiff’s particulars of claim filed on record, dated 10 August 2021.

AND WHEREAS the First Defendant defended the action.

AND WHEREAS the parties are desirous to settle the investigation under case number: 2017JAN0002COMP and the legal proceedings under case number: HC-MD-CIV-ACT-OTH-2021/03064 before the High Court of Namibia, and as a result the parties have come to an agreement as contemplated in section 40(1) of the Competition Act.

AND WHEREAS the parties hereby agree that; the Plaintiff makes an application to the High Court of Namibia for confirmation of the terms of this consent agreement as an order of the Court, in terms of section 40 read with section 52 of the Competition Act.

NOW THEREFORE the Plaintiff and the First Defendant agree to settle the Investigation and the High Court proceedings on the terms and conditions set out herein in full and final settlement, which terms are as follows:

2. DEFINITIONS

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

- 2.1 **“Commission”** means the Namibian Competition Commission, a juristic person as established in terms of section 4 of the Act.
- 2.2 **“Consent Agreement”** means this Consent Agreement, duly signed and concluded between the Commission and the First Defendant, as contemplated in section 40(1) of the Act.
- 2.3 **“Day(s)”** means calendar days.
- 2.4 **“The parties”** means the Plaintiff and First Defendant.
- 2.5 **“High Court proceedings”** means the action proceedings initiated in the High Court of Namibia by the Plaintiff against the First Defendant under case number.: HC-MD-CIV-ACT-OTH-2021/03064 on 12 August 2021.
- 2.6 **“Investigation”** means the investigation initiated against the First Defendant by the Commission in terms of section 33(1) of the Competition Act under case number 2017JAN0002COMP.

3. CONDUCT

The Plaintiff’s Investigation found that the First Defendant contravened section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Competition Act by entering into exclusive agreements which affords preferential rights, sole distribution rights, waiving of excess fees and rebates to the respondents.

4. ADMISSION OF LIABILITY

The First Defendant disputes the factual findings and interpretation of the Act by the Commission. However, for the purpose of settlement, the First Respondent admits that its conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Competition Act.

5. CESSATION OF CONDUCT

The First Defendant records that it has ceased the conduct and shall take all necessary steps to ensure that it does not engage in the conduct specified under paragraph 3 herein in the future.

6. COMPLIANCE PROGRAMME

- 6.1 In addition to the above, the First Defendant will update an already developed 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 do not engage in any conduct that is prohibited in terms of the Competition Act.
- 6.2 A copy of the First Defendant’s compliance programme shall be made available to the Plaintiff within sixty (60) days of the date of confirmation of this Consent Agreement as an order of Court.

- 6.3 The First Defendant shall produce a compliance programme progress report six (6) months after the submission of the compliance programme referred to under paragraph 6.2 above to the Plaintiff and at any subsequent date when requested to do so by the Plaintiff.

7. AGREEMENT CONCERNING FUTURE CONDUCT

- 7.1 The First Defendant will prepare a statement explaining in summary, the content of this Consent Agreement and make it available to its employees holding Managerial positions within thirty (30) days after confirmation of this Consent Agreement as an order of the Court.
- 7.2 The First Defendant shall provide the Plaintiff with a copy of the statement referred to under paragraph 7.1 herein, within forty (40) days after confirmation of this Consent Agreement as an order of the Court.
- 7.3 The First Defendant shall act in accordance with the terms of this Consent Agreement and shall implement the following measures:
- 7.3.1 Review all its policies, practices and operations by way of internal audits.
- 7.3.2 Invest in educating its staff members continuously on competition law compliance in Namibia.
- 7.3.3 Actively engage the Plaintiff by obtaining advisory opinions to assist in identifying and implementing best practices.
- 7.3.4 Implement a zero-tolerance policy towards anti-competitive behaviour by its staff members.

8. SETTLEMENT PAYMENTS

- 8.1 The First Defendant shall pay a total settlement amount of **N\$ 5,000,000.00 (Five Million Namibian dollars)** comprising of the following:
- 8.1.1 A pecuniary penalty of N\$ 3,500,000.00 (Three Million Five Hundred Thousand Namibian dollars); and
- 8.1.2 A portion of the Plaintiff's costs incurred as a result of the investigation and subsequent process in the amount N\$ 1,500,000.00 (One Million Five Hundred Thousand Namibian dollars).
- 8.2 The above payments shall be made within 60 days after confirmation of this Consent Agreement as an order of the Court.
- 8.3 The First Defendant shall remit payment of the penalty through an electronic funds transfer into the Plaintiff's bank account, of which the details are:

Name of Account holder:	NAMIBIAN COMPETITION COMMISSION
Bank Name:	BANK WINDHOEK
Account Number:	8001663543
Branch:	MAIN BRANCH
Branch code:	481972
Reference:	2017JAN0002COMP

- 8.4 The pecuniary penalty will be paid over by the Plaintiff into the State Revenue Fund in accordance with the provisions of section 53(5) of the Competition Act.

9. COURT ORDER

- 9.1 The Consent Agreement is conditional upon it being confirmed as an order of the Court. Should the Court not confirm this Consent Agreement, all terms and conditions of this Consent Agreement shall lapse and have no force and effect and be regarded as a without prejudice proposal, confidential, and cannot be used by either party as evidence in any proceeding, or otherwise, whatsoever.
- 9.2 Each Party shall pay its own legal costs for all legal and incidental costs incurred in the High Court proceedings under case number.: HC-MD-CIV-ACT-OTH-2021/03064, including the costs for the drafting and confirmation of this Consent Agreement as an order of Court.
- 9.3 Notwithstanding the above, if either one of the parties repudiate this Consent Agreement or the First Defendant opposes the Plaintiff's application for confirmation of this Consent Agreement by Court, the defaulting party shall carry the costs for the confirmation of this Consent Agreement on behalf of the other party.

10. FULL AND FINAL SETTLEMENT

- 10.1 The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Investigation under case number 2017JAN0002COMP and the High Court proceedings under case number: HC-MD-CIV-ACT-OTH-2021/03064 between the parties.
- 10.2 No alterations, amendment, variation or consensual termination of this agreement shall be of force or effect unless reduced to writing and signed by both parties.

NAMIBIAN COMPETITION COMMISSION

No. 207

2023

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 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 Court for confirmation as an order of the Court, a consent agreement entered into with Momentum Short-Term Insurance Company Limited (Pty) Ltd on **5 April 2023**.

Section 40 of the Competition Act mandates the Namibian Competition Commission to enter into settlement agreements with the 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 2017JAN-0002COMP and case number.: HC-MD-CIV-ACT-OTH-2021/03064 in respect of Momentum Short-Term Insurance Company Limited (Pty) Ltd.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER
SECRETARY TO THE COMMISSION

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
NAMIBIAN COMPETITION COMMISSION // SANTAM NAMIBIA LIMITED AND 7 OTHERS

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

CASE NUMBER: 2017JAN0002COMP

1. The Commission on or about 30 January 2017 and 14 March 2018 initiated an investigation against:
 - 1.1 Santam Namibia Ltd (“Santam”);
 - 1.2 Hollard Insurance Company of Namibia Ltd (“Hollard”);
 - 1.3 Old Mutual Short-Term Insurance Company Ltd (“OMSIC”);
 - 1.4 Momentum Short-Term Insurance Ltd (previously known as Quanta Insurance Ltd (“Momentum”));
 - 1.5 Greg’s Motor Spares (Pty) Ltd (“Greg’s”);
 - 1.6 Perfect Glass CC (“Perfect Glass”); and
 - 1.7 PG Glass Namibia (Pty) Ltd (“PG Glass”) (jointly referred to as “the Defendants”).
2. The Commission on or about 10 July 2018 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(b) and 23(3)(e) and 23(3)(f) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Defendants. On or about 18 December 2019, the Commission issued a Form 7 Notice advising the Defendants that it planned to take action in terms of section 38 of the Act and providing reasons for the Commission’s decision. The Form 7 Notice was published in the Government Gazette on 31 December 2019.
3. In settlement of the investigation by the Commission, the Commission and Momentum on 5 April 2023 entered into a Consent Agreement in terms of section 40 of the Act. The Commission accordingly gives notice that it intends to submit the attached Consent Agreement with Momentum 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 Fourth Defendant has contravened section 23(1) read with sections 23(2)(b) and 23(3)(e) and 23(3)(f) of the Act by entering into exclusive agreements which affords preferential rights, sole distribution rights, waiving of excess fees and rebates to the Defendants.
 - 4.2. Momentum admits that its conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Act.
 - 4.3. The Commission and Momentum 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

11 April 2023

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Plaintiff

and

**MOMENTUM SHORT-TERM INSURANCE COMPANY
LIMITED (PTY) LTD**

4th Defendant

CONSENT AGREEMENT BETWEEN THE PLAINTIFF ON THE ONE HAND AND THE
FOURTH DEFENDANT ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION
PERTAINING TO AN ALLEGED CONTRAVENTION OF SECTION 23(1) AS
READ WITH SECTIONS 23(2)(b), 23(3)(e) AND 23(3)(f) OF THE
COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)

1. PREAMBLE

WHEREAS the Plaintiff upon the receipt of information and consideration of such information initiated an investigation into the alleged conduct of the Defendant, in contravention of section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Competition Act 2 of 2003 (hereinafter referred to as “the Competition Act”).

AND WHEREAS the Plaintiff instituted legal proceedings against the Defendants in the above matter in the High Court of Namibia following the outcome of the investigation and sought relief as set out in the Plaintiff’s particulars of claim filed on record, dated 10 August 2021.

AND WHEREAS the 4th Defendant defended the action.

AND WHEREAS the parties are desirous to settle the investigation under case number: 2017JAN0002COMP and the legal proceedings under case number: HC-MD-CIV-ACT-OTH-2021/03064 before the High Court of Namibia, and as a result the parties have come to an agreement, as contemplated in section 40(1) of the Competition Act.

AND WHEREAS the parties hereby agree that; the plaintiff makes an application to the High Court of Namibia for confirmation of the terms of this consent agreement as an order of the Court, in terms of section 40 read with section 52 of the Competition Act.

NOW THEREFORE the Plaintiff and the 4th Defendant agree to settle the Investigation and the High Court proceedings on the terms and conditions set out herein in full and final settlement, which terms are as follows:

2. DEFINITIONS

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

2.1 “**Act**” means the Competition Act, 2003 (Act No. 2 of 2003).

2.2 “**Commission**” means the Namibian Competition Commission, a juristic person as established in terms of section 4 of the Act.

- 2.3 **“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.
- 2.4 **“Day(s)”** means calendar days.
- 2.5 **“Plaintiff”** means the Namibian Competition Commission.
- 2.6 **“4th Defendant”** means MOMENTUM SHORT-TERM INSURANCE COMPANY LIMITED, a company duly incorporated in accordance with the laws of the Republic of Namibia.
- 2.7 **“The parties”** means the Plaintiff and the 4th Defendant.
- 2.8 **“High Court proceedings”** means the action proceedings initiated in the High Court of Namibia by the Plaintiff against the 4th Defendant under case number.: HC-MD-CIV-ACT-OTH-2021/03064 on 12 August 2021 wherein the Commission is the Plaintiff, and the 4th Defendant is Momentum Short-Term Insurance Company Limited.
- 2.9 **“Investigation”** means the investigation initiated against the Defendant by the Plaintiff in terms of section 33(1) of the Act under case number 2017JAN0002COMP.

3. CONDUCT

- 3.1 The Plaintiff’s Investigation found that the 4th Defendant contravened section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Act by entering into exclusive agreements which affords preferential rights, sole distribution rights, waving excess fees and rebates to the respondents.

4. ADMISSION OF LIABILITY

- 4.1 The 4th Defendant admits that its conduct constitutes an unintended contravention of 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Act.

5. CESSATION OF CONDUCT

- 5.1 The 4th Defendant records that it has in any event ceased the conduct and shall take all necessary steps to ensure that it does not engage in the conduct under paragraph 3 herein in future.

6. COMPLIANCE PROGRAMME

- 6.1 In addition to the above, the 4th 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 do not engage in any conduct that is prohibited in terms of the Competition Act.
- 6.2 A copy of the 4th Defendant’s compliance programme shall be made available to the Plaintiff within sixty (60) days of the date of confirmation of this Consent Agreement as an order of Court.
- 6.3 The 4th Defendant shall produce a compliance programme progress report, six (6) months after the submission of the compliance programme referred to under paragraph 6.2 above to the Plaintiff and at any subsequent date when requested to do so by the Plaintiff.

7. AGREEMENT CONCERNING FUTURE CONDUCT

- 7.1 The 4th Defendant will prepare a statement explaining in summary, the content of this Consent Agreement and make it available to its employees holding Managerial positions within thirty (30) days after confirmation of this Consent Agreement as an order of the Court.
- 7.2 The 4th Defendant shall provide the Plaintiff with a copy of the statement referred to under paragraph 7.1 herein, within forty (40) days after confirmation of this Consent Agreement as an order of the Court.
- 7.3 The 4th Defendant shall act in accordance with the terms of this Consent Agreement and shall implement the following measures:
- 7.3.1 Review all its policies, practices and operations by way of internal audits.
- 7.3.2 Invest in educating its staff members continuously on competition law compliance in Namibia
- 7.3.3 Actively engage the Plaintiff by obtaining advisory opinions to assist in identifying and implementing best practices.
- 7.3.4 Implement a zero-tolerance policy towards anti-competitive behaviour by its staff members.

8. SETTLEMENT PAYMENTS

- 8.1 The Defendant shall pay, a total settlement amount of **NS 750,000.00 (Seven Hundred and Fifty Thousand Namibian Dollars)** comprising of the following:
- 8.1.1 A pecuniary penalty of N\$ 500 000.00. (Five Hundred Thousand Namibian Dollars); and
- 8.1.2 A portion of the Plaintiff's costs incurred as a result of the investigation and subsequent process at the amount of N\$ 250 000.00 (Two Hundred and Fifty Thousand Namibian Dollars).
- 8.2 The above payments shall be made within 60 days after confirmation of this Consent Agreement as an order of the Court.
- 8.3 The Defendant shall remit payment of the penalty through an electronic funds transfer into the Plaintiff's bank account, of which the details are:
- Name of Account holder: NAMIBIAN COMPETITION COMMISSION**
Bank Name: BANK WINDHOEK
Account Number: 8001663543
Branch: Main Branch
Branch code: 481972
Reference: 2017JAN0002COMP
- 8.4 The pecuniary penalty will be paid over by the Plaintiff into the State Revenue Fund in accordance with the provisions of section 53(5) of the Competition Act.

9. COURT ORDER

- 9.1 The Consent Agreement is conditional upon it being confirmed as an order of the Court. Should the Court not confirm this Consent Agreement, all terms and conditions of this Consent Agreement shall lapse and have no force and effect and be regarded as a without prejudice proposal, confidential, and cannot be used by either party as evidence in any proceeding, or otherwise, whatsoever.
- 9.2 Each Party shall pay its own legal costs for all legal and incidental costs incurred in the High Court proceedings under case number: HC-MD-CIV-ACT-OTH-2021/03064, including the costs for the drafting and confirmation of this Consent Agreement as an order of Court.
- 9.3 Notwithstanding the above, if either one of the parties repudiate this Consent Agreement or the 4th Defendant opposes the Plaintiff's application for confirmation of this Consent Agreement by Court, the defaulting party shall carry the costs for the confirmation of this Consent Agreement on behalf of the other party.

10. FULL AND FINAL SETTLEMENT

- 10.1 The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Investigation under case number 2017JAN0002COMP and the High Court proceedings under case number: HC-MD-CIV-ACT-OTH-2021/03064 between the parties.
- 10.2 No alterations, amendment, variation or consensual termination of this agreement shall be of force or effect unless reduced to writing and signed by both parties.
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