



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$8.00

WINDHOEK - 14 June 2023

No. 8110

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 273

2023

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003:
NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
OSHANA PRINTING SHOP CC //
MAXES OFFICE MACHINES PTY LTD AND RISO AFRICA (PTY) LTD

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 Maxes Office Machines (Pty) Ltd on 21 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 under case number 2017APR0004COMP in respect of Maxes Office Machines (Pty) Ltd.

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

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
OSHANA PRINTING SHOP CC //
MAXES OFFICE MACHINES PTY LTD AND RISO AFRICA PTY LTD

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

(CASE NUMBER: 2017APR0004COMP)

1. The Commission on or about 23 August 2017 initiated an investigation against:
 - 1.1 Maxes Office Machines (Pty) Ltd (“Maxes”);
 - 1.2 Riso Africa (Pty) Ltd (“Riso”);(jointly referred to as “the Respondents”).
2. The Commission on or about 25 September 2019 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(b) and 23(3)(e) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Respondents. On or about 29 September 2022, the Commission issued a Form 7 Notice advising the Respondents 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 21 October 2022.
3. In settlement of the investigation by the Commission, the Commission and Maxes on 21 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 Maxes 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 Maxes has contravened section 23(1) read with sections 23(2)(b) and 23(3)(e) of the Act by entering into an exclusive distributorship agreement which affords sole distribution rights of Riso related products in Namibia to Maxes.
 - 4.2. Maxes disputes the factual findings and interpretation of the Act by the Commission. However, for the purposes of settlement, Maxes admits that its conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(b) and 23(3) (e) of the Act.
 - 4.3. The Commission and Maxes have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

APPLICANT

and

MAXES OFFICE MACHINES (PTY) LTD

RESPONDENT

CONSENT AGREEMENT BETWEEN THE APPLICANT ON THE ONE HAND AND THE
RESPONDENTS 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) AND 23(3)(e) OF THE COMPETITION ACT, 2003

1. PREAMBLE

WHEREAS the Applicant upon the receipt of information and consideration of such information initiated an investigation into the alleged conduct of the Respondent, in contravention of section 23(1) read with sections 23(2)(b) and section 23(3)(e) of the Competition Act, 2003 (Act No. 2 of 2003) (hereinafter referred to as “the Competition Act”).

AND WHEREAS the Respondent, in settlement of the investigation by the Commission under case number: 2017APR0004COMP, 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:

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 “**Investigation**” means the investigation initiated against the Respondent by the Applicant in terms of section 33(1) of the Act under case number 2017APR0004COMP.
- 2.5 “**Respondent**” means Maxes Office Machines (Pty) Ltd, a company duly incorporated in accordance with the laws of the Republic of Namibia.

3. CONDUCT

The Applicant's Investigation found that the Respondent unintentionally contravened section 23(1) read with sections 23(2)(b) and 23(3)(e) of the Competition Act by entering into an exclusive distributorship agreement which affords sole distribution rights of Riso related products in Namibia to the Respondent.

4. ADMISSION OF LIABILITY

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

5. CESSATION OF CONDUCT

The Respondent 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 the future.

6. COMPLIANCE PROGRAMME

6.1 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, 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 Respondent'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 Respondent 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 Applicant and at any subsequent date when requested to do so by the Applicant.

7. AGREEMENT CONCERNING FUTURE CONDUCT

7.1 The Respondent 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 Respondent shall provide the Applicant 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 Respondent 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 Applicant 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 N\$ 341,601.12 (**Three Hundred and Forty-One Thousand Six Hundred and One Namibian Dollars and Twelve Cents**) comprising of the following:

8.1.1 A pecuniary penalty of N\$ 273,280.90 (Two Hundred and Seventy-Three Thousand Two Hundred and Eighty Namibian Dollars and Ninety Cents); and

8.1.2 A portion of the Applicant's costs incurred as a result of the investigation and subsequent process at the amount of N\$ 68,320.22 (Sixty-Eight Thousand Three Hundred and Twenty Namibian Dollars and Twenty-Two Cents).

8.2 The above payments shall be made in four equal monthly instalments within 24 months after confirmation of this Consent Agreement as an order of the Court.

8.3 The Respondent shall remit payment of the penalty through an electronic funds transfer into the Applicant'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 Applicant 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 for confirmation of this Consent Agreement as an order of Court.

9.3 Notwithstanding the above, the Respondent shall carry the Applicant'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 Applicant's application for confirmation of the Consent Agreement by Court.

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 and shall conclude the proceedings under case number 2017APR0004COMP in respect of the Respondent.
- 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. 274

2023

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003:
 NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
 OSHANA PRINTING SHOP CC //
 MAXES OFFICE MACHINES PTY LTD AND RISO AFRICA (PTY) LTD

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 Riso Africa (Pty) Ltd on 21 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 under case number 2017APR0004COMP in respect of Riso Africa (Pty) Ltd.

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

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- (jointly referred to as “the Respondents”).

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3. In settlement of the investigation by the Commission, the Commission and Riso on 21 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 Riso 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 Riso has contravened section 23(1) read with sections 23(2)(b) and 23(3)(e) of the Act by entering into an exclusive distributorship agreement which affords sole distribution rights of Riso related products in Namibia to Maxes.
 - 4.2. Riso disputes the factual findings and interpretation of the Act by the Commission. However, for the purposes of settlement, Riso admits that its conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(b) and 23(3)(e) of the Act.
 - 4.3. The Commission and Riso have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

APPLICANT

and

RISO AFRICA (PTY) LTD

RESPONDENT

CONSENT AGREEMENT BETWEEN THE APPLICANT ON THE ONE HAND AND THE
RESPONDENTS ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION
PERTAINING TO AN ALLEGED CONTRAVENTION OF SECTION 23(1) AS READ
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1. PREAMBLE

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- 2.4 **“Investigation”** means the investigation initiated against the Respondent by the Applicant in terms of section 33(1) of the Act under case number 2017APR0004COMP.
- 2.5 **“Respondent”** means **Riso Africa (Pty) Ltd**, a company duly incorporated in accordance with the laws of the Republic of South Africa.

3. CONDUCT

The Applicant’s Investigation found that the Respondent unintentionally contravened section 23(1) read with sections 23(2)(b) and 23(3)(e) of the Competition Act by entering into an exclusive distributorship agreement which affords sole distribution rights of Riso related products in Namibia to Maxes Office Machines (Pty) Ltd.

4. ADMISSION OF LIABILITY

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

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