



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 6 April 2016

No. 5988

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 103

2016

NOTICE OF ACTION TO BE TAKEN UNDER SECTION 38: PETRUS ANDREAS
FAKKELYN MULLER - CARSNAMIBIA // NAMCARS (PTY) LTD
CASE: 2013MAR0003COMP

Competition Act, 2003 (Act No. 2 of 2003)
(Section 41, Rule 18 (1))

1. The Namibian Competition Commission ("the Commission") received a complaint against Namcars (Pty) Ltd ("Namcars") filed by CarsNamibia on 13 March 2013. The Commission has given notice of its proposed decision on 23 June 2015.
2. **The Commission gives notice that it intends to take the following action against Namcars under section 38:**

Following the investigation and considering all submissions made in respect of this matter, the Commission has decided to initiate proceedings in the Court against the Respondent for an order:

- 2.1 declaring that Namcars has contravened section 26 (1), read with section 26(2)(b) of the Competition Act and ordering that they cease with the conduct in question within 30 days;
- 2.2 interdicting Namcars from engaging in the above conduct or any other conduct that infringes the Competition Act;
- 2.3 in the event that Namcars fails to cease with the said conduct within 30 days, that the Court order for the immediate suspension of Namcars website and/or domain or any other appropriate relief;
- 2.4 seeking an appropriate pecuniary penalty against Namcars in terms of section 53 (1) (a) and 23 (2) of the Competition Act, taking into account the factors in section 53 (3) of the Competition Act; and
- 2.5 ordering that Namcars pay the costs of the proceedings; and such further and/or alternative relief as the Court may consider appropriate.

The Commission records its willingness to engage with the respondent in an endeavour to settle this matter with the object of avoiding court proceedings. This remains an ongoing and open invitation on the part of the Commission.

Against:

The following undertaking (s) are listed as respondents against which relief will be sought in terms of section 38;

- 2.6 **Namcars**, an online advertising website registered in South Africa with its address at 16 Woodlands Road, Somerset West 7130, Cape Town, South Africa.

3. The nature of the conduct that is the subject of this action is:

- 3.1 Namcars is a dominant undertaking and it is abusing its dominant position by imposing a policy that prohibits automotive dealers who advertise with Namcars from advertising their used vehicles on competing websites. Furthermore, this policy is harmful, as it creates barriers to entry and leads to foreclosure as Namcars' rivals are unable to access the market. Therefore, Namcars' conduct is in contravention of section 26 (1), read together with section 26(2)(b) of the Act.

S. AKWEENDA
CHAIRPERSON

Windhoek, 22 March 2016
