



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 355

2019

NOTICE OF ACTION TO BE TAKEN UNDER SECTION 38: THE NAMIBIAN COMPETITION COMMISSION // SANTAM NAMIBIA LIMITED AND 82 OTHERS

(CASE NUMBER: 2016OCT0008COMP)
COMPETITION ACT, 2003
(Section 41, Rule 18(1))

1. The Namibian Competition Commission (“the Commission”) on 29 August 2016 initiated a complaint and on or about 24 November 2016 initiated an investigation against various insurance companies, including those insurance companies listed in terms of paragraphs 2.2 to 2.5 below (“the Respondents”). The Commission investigated the matter and on or about 27 April 2018 gave a notice of its proposed decision.
2. **The Commission gives notice that it intends to take the following action under section 38:**
 - 2.1 Following the investigation and consideration of all representations, including the written representations made in terms of section 36 and the matters raised at the conference held in accordance with section 37 of the Competition Act, the

Commission has decided to institute proceedings in Court against the Respondents for an order:

- 2.1.1 declaring that the Respondents have contravened section 23(1) read with section 23(2)(a) and section 23(3)(a) of the Competition Act;
- 2.1.2 restraining the Respondents from engaging in the conduct in question (i.e. interdicting the Respondents from participating or engaging in any process whereby pricing is discussed, determined, recommended or implemented in a manner that infringes the Competition Act);
- 2.1.3 seeking an appropriate pecuniary penalty against the Respondents in terms of section 53(1)(a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
- 2.1.4 ordering the Respondents to pay the costs of the proceedings and such further and/or alternative relief as the Court may consider appropriate.

Against:

The following undertakings are listed as the Respondents against which relief will be sought in terms of section 38:

- 2.2 **Old Mutual Short-Term Insurance Company Limited**, a short-term insurance company with its place of business located at No. 223 Independence Avenue, Mutual Tower, Windhoek, Namibia;
- 2.3 **Outsurance Insurance Company of Namibia Limited**, a short-term insurance company with its place of business located at the corner of Jan Jonker & Robert Mugabe Streets, 2nd Floor, Maerua Office Block, Windhoek, Namibia;
- 2.4 **Phoenix Assurance Namibia Limited**, a short-term insurance company with its place of business located at Lindquist Street No. 4, Windhoek, Namibia; and
- 2.5 **Momentum Short-Term Insurance Limited (previously known as Quanta Insurance Limited)**, a short-term insurance company with its place of business located at the corner of Feld and Jan Jonker Streets, Windhoek, Namibia.

Where appropriate, the undertakings listed in paragraphs 2.2 to 2.5 above will be referred to as “Respondents” or “insurance companies” herein.

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

- 3.1 The Respondents as short-term insurance companies are responsible for defraying the costs for vehicle repairs on behalf of their policyholders.
- 3.2 The Commission’s investigation, the submissions received and the evidence uncovered indicates that the Respondents, being undertakings trading in competition with each other (i.e. undertakings in a horizontal relationship within the meaning of the Competition Act) participated in discussions and/or agreed on:
 - 3.2.1 the setting of maximum mark-ups that panel beaters should charge for vehicle repairs where part replacement is required; and
 - 3.2.2 the setting of maximum rates that panel beaters should charge for their labour in the repair of vehicles.

- 3.3 Some of the Respondents have denied engaging in the conduct and have claimed that:
- 3.3.1 the conduct cannot be characterized as being price fixing;
 - 3.3.2 the Respondents are setting their prices independently;
 - 3.3.3 the Respondents lack bargaining power against the panel beaters; and that
 - 3.3.4 the Commission lacks jurisdiction to investigate the matter on account of the fact that the conduct ceased more than three years prior to the initiation of the Commission's investigation.
- 3.4 Based on the grounds set out herein, the Commission was not persuaded by the above claims.
- 3.5 In addition, despite the above-mentioned claims and/or denials by the Respondents, several other insurance companies have admitted to engaging in the above-mentioned conduct and have consequently implicated the Respondents therein.
- 3.6 The Commission's investigation has further found that at all relevant times since the Competition Act came into operation and beyond the initiation of the Commission's investigation:
- 3.6.1 there has been an agreement and/or concerted practice between the insurance companies in terms of which the insurance companies discussed and agreed on the applicable panel beater rates and mark-ups and further agreed that the rates would be increased annually taking into account factors such as the prevailing inflation rate;
 - 3.6.2 the Respondents facilitated their collusive conduct and enhanced their bargaining power against the panel beaters by discussing, making suggestions and agreeing with each other regarding the prices that would be offered to the panel beaters. The discussions took place at various platforms including the Namibia Insurance Association and Claim Managers Forum meetings, through off-the-record discussions after meetings and through the exchange of e-mails and letters. In particular, the Respondents shared with each other the prices that had been offered by the panel beaters and then agreed amongst themselves on appropriate prices to be charged by panel beaters;
 - 3.6.3 when new insurance companies entered the market over the years, the price fixing arrangement remained intact and they relied on the prevailing panel beater prices in determining their prices. The participation of the Respondents that entered the market in later years is also evident from their participation in discussions and/or information exchanges relating to pricing methodologies; and
 - 3.6.4 The conduct continued despite claims by some Respondents that they had ceased participating in the conduct more than three years prior to the initiation of the Commission's investigation in 2016. The Respondents remained active participants in the conduct well beyond the period of years that they had presented to the Commission.
- 3.7 The conduct has endured since the coming into operation of the Competition Act and no exemption has been sought in terms of Part III of the Competition Act in this matter.

- 3.8 The Commission therefore finds that the determining, setting, imposing and/or establishing of maximum mark-ups and labour rates by the Respondents amounts to restrictive agreements or concerted practices between parties in a horizontal relationship (the Respondents) which prevent or substantially lessen competition by means of the fixing of prices and trading conditions as envisaged in terms of section 23(1) read with section 23(2)(a) and 23(3)(a) of the Competition Act. The conduct is of the nature of cartel conduct and recognized as the most serious and harmful under competition law.
4. Notwithstanding the above, the Commission records that it is willing to engage with the Respondents with the object of settling the matter in terms of section 40 of the Competition Act and to avoid proceedings in terms of section 38 of the Competition Act.

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION
