



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 23 September 2024

No. 8449

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 551

2024

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

The Namibia Competition Commission, in terms of section 41 of the Competition Act, 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 Limited on 30 August 2024.

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 2016OCT0008COMP in respect of Momentum Short-Term Insurance Limited.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

Windhoek, 9 September 2024

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT: NAMIBIAN
COMPETITION COMMISSION // OLD MUTUAL SHORT-TERM INSURANCE COMPANY
LIMITED

(CASE NUMBER: 2016OCT0008COMP)

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

1. The Commission on or about 24 November 2016 initiated an investigation against:
 - 1.1 Old Mutual Short-Term Insurance Company (“OMSIC”);
 - 1.2 Outsurance Insurance Company Limited (“Outsurance”);
 - 1.3 Phoenix Assurance Namibia Limited (“Phoenix”); and
 - 1.4 Momentum Short-Term Insurance Limited (“Momentum”);
(jointly referred to as “the Respondents”).
2. The Commission on or about 27 April 2018 gave notice of its preliminary decision (Form 6 Notice) 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 Respondents. On or about 21 August 2019, 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 5 September 2019.
3. In settlement of the investigation by the Commission, the Commission and Momentum on 30 August 2024 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 Momentum has contravened section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act by setting the maximum mark-ups afforded by such insurance companies to panelbeaters on replacement motor vehicle parts used by such panelbeaters in the repair of insured motor vehicles and the labour rates paid by such insurance companies to panelbeaters for panelbeating work on insured motor vehicles.
 - 4.2 Momentum denies that it has contravened the provisions of the Act by the Commission. However, for the purposes of settlement, Momentum will nevertheless ensure that its seniors are made aware of the Commission’s findings against other short-term insurers as part of its general competition law awareness training and have only agreed to settle case number HC-MD-CIV-ACT-OTH-2022/00404 to avoid incurring further costs on the following basis, which is in full and final settlement of the case.
 - 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
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

APPLICANT

and

MOMENTUM SHORT-TERM INSURANCE LIMITED

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)(a) AND 23(3)(a) 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)(a) and section 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (hereinafter referred to as “the Act”).

AND WHEREAS the Respondent, in settlement of the investigation by the Commission under case number: 2016OCT0008COMP, 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 2016O0008 COMP.
- 2.5 “**Respondent**” means **Momentum Short-Term Insurance Limited**, a company duly incorporated in accordance with the laws of the Republic of Namibia.

3. CONDUCT

The Applicant's Investigation found that the Respondent contravened section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Competition Act by setting a mark-ups on the procurement of panelbeating services from panelbeaters, as well as affording panelbeaters new parts; and setting mark-ups on the labour rates that they would pay panelbeaters for the repair of insured motor vehicles in Namibia.

4. ADMISSION OF LIABILITY

The Respondent denies that it has contravened section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Competition 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 Respondent shall pay, a total settlement amount of **N\$1 000 000.00 (One Million Namibian Dollars)** comprising of the following:
- 8.1.1 A pecuniary penalty of N\$ 700 00.00 (Seven Hundred Thousand Namibian Dollars); 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\$ 300 000.00 (Three Hundred Thousand Namibian Dollars).
- 8.2 The amount becomes payable upon 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: | 2016OCT0008COMP |
- 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 2016OCT0008COMP in respect of the Respondent.

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- 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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