



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 5 February 2025

No. 8573

### CONTENTS

*Page*

#### GENERAL NOTICE

No. 95    Namibian Competition Commission: Notice in terms of section 41 of the Competition Act, 2003 ..... 1

## General Notice

### NAMIBIAN COMPETITION COMMISSION

No. 95

2025

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

In terms of section 41 of the Competition Act, 2003 (Act No. 2 of 2003), the Namibian Competition Commission herewith gives notice that it intends to institute proceedings in Court in terms of section 38 of the Competition Act, against Namib Mills (Pty) Ltd and Namib Poultry Industries (Pty) Ltd.

Section 38 of the Competition Act mandates the Namibian Competition Commission after consideration of any written representations made in terms of section 36 or any matters raised at a conference held in accordance with section 37, may institute proceedings in the Court against the undertaking or undertakings concerned for an order:

- (a) declaring the conduct which is the subject matter of the Commission's investigation, to constitute an infringement of the Part I or the Part II prohibition;
- (b) restraining the undertaking or undertakings from engaging in that conduct;
- (c) directing any action to be taken by the undertaking or undertakings concerned to remedy or reverse the infringement or the effects thereof;
- (d) imposing a pecuniary penalty; or

- (e) granting any other appropriate relief.

**V. NDALIKOKULE**

**CHIEF EXECUTIVE OFFICER AND SECRETARY TO THE COMMISSION  
NAMIBIAN COMPETITION COMMISSION**

AMENDMENT OF GOVERNMENT GAZETTE NO. 8561, GENERAL NOTICE NO. 13:  
NOTICE OF ACTION TO BE TAKEN UNDER SECTION 38 OF THE COMPETITION  
ACT, 2003 CONCERNING: NAMIBIAN COMPETITION COMMISSION // NAMIB MILLS  
(PTY) LTD AND NAMIB POULTRY INDUSTRIES (PTY) LTD

(CASE NUMBER: 2022JUN0008COMP)

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

1. The Namibian Competition Commission (“the Commission”) has on **29 June 2022** resolved to initiate an investigation against Namib Mills (Pty) Ltd (“Namib Mills”) and Namib Poultry Industries (Pty) Ltd (“NPI”) (hereinafter collectively referred to as “the Respondents”) in terms of section 33 of the Competition Act, 2003 (Act No. 2 of 2003) (“the Competition Act”). The Commission investigated the matter and gave notice of its proposed decision on **21 December 2023**.
2. **The Commission gives notice that it intends to take the following action under section 38 of the Competition Act:**

Following the investigation and consideration of all representations, including the written and oral representations made in terms of section 36, section 37 and section 38 of the Act, the Commission has decided to institute proceedings in Court against the Respondents for an order:

- 2.1 Declaring that the Respondents have contravened section 23(1) read with sections 23(2)(b), 23(3)(b), 23(3)(e), 23(3)(f) and section 26(1) read with sections 26(2)(a), 26(2)(b) and 26(2)(c) of the Competition Act;
- 2.2 Ordering the Respondents to cease with the conduct;
- 2.3 Restraining the Respondents from engaging in the conduct in future;
- 2.4 Seeking an appropriate pecuniary penalty against the Respondents in terms of sections 53(1)(a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
- 2.5 Ordering that the Respondents pay the costs of the proceedings; and
- 2.6 Such further and/or alternative relief as the Court may consider appropriate.

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

- 2.7 **Namib Mills (Pty) Ltd** (“Namib Mills”) is a subsidiary company of Namib Mills Group Trust established in 1982, duly registered in terms of the relevant company laws of the Republic of Namibia, with its principal place of business at Dortmund Street, Northern Industrial, Windhoek, Namibia.

- 2.8 **Namib Poultry Industries (Pty) Ltd** (“NPI”) is a subsidiary company to Namib Mills Group Trust and was established in 2011, duly registered in accordance with the relevant company laws of the Republic of Namibia, with its principal place of business at Okapuka Farm, B1 Highway, Windhoek, Namibia.

The parties are jointly referred to as the “**Respondents**”.

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

- 3.1 The investigation emanated from information received by the Commission alleging that Namib Mills and NPI are refusing to sell certain poultry products from its supply and distribution range to Micro, Small and Medium Enterprises (“MSMEs”).
- 3.2 The information suggested that Namib Mills and NPI do not allow certain MSMEs, especially new entrants in the market to purchase poultry stock products categorized as “tertiary range products”. It is alleged that these products are in high demand in the informal sector, where the majority of MSMEs conduct their business. In doing so, the refusal to sell to new and existing MSMEs could be said to stifle competition in the relevant market, as it creates barriers to entry by refusing to supply.
- 3.3 The investigation established that the Respondents’ conduct is deemed to be a contravention of section 23(1) read with sections 23(2)(b), 23(3)(b), 23(3)(e), 23(3)(f) and section 26(1) read with sections 26(2)(a), 26(2)(b) and 26(2)(c) of the Act.
- 3.4 The Commission’s finding is informed by the following:
- 3.4.1 In the submissions provided to the Commission by MSMEs it is highlighted that, MSMEs in the poultry industry serve the needs of informal settlements, where there is a strong demand for products included in the Respondent’s tertiary range products portfolio. Tertiary range products are referred to by the Respondents as soup packs, giblets, necks (bulk), hearts, Gizzards, Necks (pre-pack), heads & feet, cleaned feet, liver tubs, mala, livers(bulk) and breastbone. Consequently, the Respondents’ practice of withholding this specific range of products from MSME customers for a period of six months is not only detrimental to undertakings involved in the selling of poultry products, but also to the end consumers.
- 3.4.2 Most of these MSMEs are situated in close proximity to informal settlements, unlike large retailers located in the central business district (CBD) areas of towns. If MSMEs are unable to supply the consumers with the desired products, consumers may be compelled to purchase from larger retailers, incurring additional expenses on transportation and potentially paying higher prices for the products. The inability of MSMEs to access these products may hinder their growth in the market, as their target market’s preferences are not reflected in their product offerings. This stagnation in the market could lead to the potential closure of these MSMEs and limiting of consumer choices.
- 3.4.3 The primary objective of competition regulation is to establish an environment where market players can freely enter a specific market, grow, and compete effectively, rather than entering the market only to exit shortly thereafter due to the actions of other players. Currently, the Respondents are the only undertakings in Namibia engaged in the local production and supply of tertiary range products.

3.4.4 Alternative options for the market involve imported products, which require quota allocation from Ministry of Industrialization and Trade (“MIT”). Obtaining quota allocation for MSME’s can be challenging, making local purchases more advantageous. Opting for imported poultry products may expose MSMEs to higher markups by the importers whom they also compete with in the market.

3.4.5 Therefore, the Respondents’ refusal to supply tertiary range products to MSMEs substantially lessens competition in the poultry market. This foreclosure negatively impacts newly established businesses and MSMEs, disadvantaging consumers by limiting their choices due to product unavailability. The consequence of the Respondents’ conduct is that undertakings such as Pro Healthy Bites cannot carry out their business effectively. This is, therefore, limiting MSMEs’ access to the market, thus reducing competition in the downstream sphere of the market.

3.5 The Commission’s investigation has in fact found that:

**3.5.1 Whether the Respondents are undertakings in the relevant market in terms of section 1 of the Act?**

Namib Mills is involved in the production and supply of staple foods such as wheat flour, maize meal, pasta, sugar, rice, and Mahangu brands in Namibia. Additionally, they are involved in the distribution of all NPI poultry products. NPI is involved in the production of poultry products in Namibia that are distributed through Namib Mills. The parties’ business operations suggest that they conduct business for gain and are thus undertakings as contemplated in terms of section 1 of the Act.

**3.5.2 Whether the conduct of the Respondents of refusal to supply Tertiary range products to MSMEs amounts to an agreement between themselves with an object or the effect of substantial lessening of competition in trade in any goods or services in Namibia?**

As stated in the submission, MSMEs in the poultry industry serve the needs of informal settlements, where there is a strong demand for products included in the Namib Mills/NPI tertiary range products portfolio. Consequently, Namib Mills/NPI’s practice of withholding this specific range of products from MSME customers for a period of six months is not only detrimental to the customers but also to the end consumers.

Most of these MSMEs are situated in close proximity to informal settlements, unlike large retailers located in the Central Business District (CBD) areas of towns. If MSMEs are unable to supply the consumers with the desired products, consumers may be compelled to purchase from larger retailers, incurring additional expenses on transportation and potentially paying higher prices for the products as alluded to above. The inability of MSMEs to access these products may hinder their growth in the market, as their target market’s preferences are not reflected in their product offerings. This stagnation in the market could lead to the potential closure of these MSMEs and limiting of consumer choices.

The primary objective of competition regulation is to establish an environment where market players can freely enter a specific market, grow, and compete effectively, rather than entering the market only to exit shortly

thereafter due to the actions of other players. Currently, Namib Mills and NPI are the only undertakings in Namibia engaged in the production and supply of tertiary range products in Namibia. Alternative options for the market involve imported products, which require quota allocation from MIT. Obtaining quota allocation for MSMEs can be challenging, making local purchases more advantageous. Opting for imported poultry products may expose MSMEs to higher markups by the importers whom they also compete with in the market.

Therefore, Namib Mills and NPI's refusal to supply tertiary range products to MSMEs substantially lessens competition in the poultry market. This foreclosure negatively impacts newly established businesses and MSMEs, disadvantaging consumers by limiting their choices due to product unavailability. The consequence of the Respondents' conduct is that MSMEs cannot carry out their business effectively. This is, therefore, MSMEs' access to the market and thus reduces competition in the downstream sphere of the market.

**3.5.3 Whether the Respondents are in a vertical relationship as contemplated under section 23(2)(b) of the Act?**

A vertical relationship exists between an undertaking and its suppliers, its customers or both. In the context of this specific matter, NPI is involved in the production of the poultry products specifically the tertiary range products and Namib Mills is the sole distributor of these products. Thus, the Respondents are in a vertical relationship as contemplated in section 23(2)(b) of the Act.

**3.5.4 If the Respondents are in a vertical relationship, whether the conduct of respondents amounts to an agreement or concerted practices that divide markets by allocating customers, suppliers, areas or specific types of goods or services, limits or controls production, market outlets or access, technical development or investment and applying of dissimilar conditions to equivalent transactions as envisaged in section 23(1) of the Act read with sections 23(2)(b), 23(3)(b), 23(3)(e) and 23(3)(f) of the Act?**

As stated above, the limiting or restricting of market outlets or access usually occurs when a firm refuses to deal with another firm and if the refusal to deal has an effect on the ability of the refused firm to compete in the downstream market. A refusal to deal can be justified however without reasonable justification such conduct is prohibited.

Namib Mills/NPI vehemently denies having any practice or policy that excludes customers from purchasing tertiary range products. They assert that any customer is free to acquire such products, provided they meet the minimum order quantity of 280kg. The companies also note that most MSME customers typically maintain cash accounts instead of credit accounts due to past issues with customers settling outstanding balances.

Despite the denial of such policies or practices by Namib Mills/NPI concerning tertiary range products, the evidence presented to the Commission strongly suggests otherwise. This behaviour is deemed anti-competitive, as there is no justified reason for a supplier to refuse to provide certain products from their portfolio to specific entities. However, in this case, Namib Mills/

NPI denies certain MSMEs the opportunity to purchase from their tertiary range while allowing them to buy from other poultry product ranges like braai packs and drumsticks which they do not need as they have no demand in their target market.

It is worth noting that in the Commission's assessment of this matter no evidence was found to suggest that there is a formal agreement between Namib Mills and NPI. Namib Mills submitted that the Namib Mills and NPI form part of the same group with Namib Mills being the sole distributor of all products produced by NPI. They added that Namib Mills has a marketing and sales team that engages with customers for the sale of poultry products produced by NPI. It can be assumed that by virtue of this relationship the parties have an understanding or arrangement between them that governs the marketing and distribution of the products by Namib Mills to the customers. The Act does not limit the definition of an agreement only to a written formal agreement, the Act states that an agreement can also be an arrangement or understanding, whether or not legally enforceable.

### **3.5.5 Whether the Respondents are dominant in the respective market?**

The Commission has defined the relevant market as the local production and supply of tertiary range products in Namibia and maintains that the definition of the product. A relevant product market comprises of all those products that customers regard as interchangeable or substitutable. In this specific case, the issue arose from the supply of tertiary range poultry products. The Commission is of the opinion that, although these products form part of the broader poultry market, they are not substitutable or interchangeable with other poultry products, such as whole birds, drumstick packs, chicken thigh packs or eggs. This is due to the nature of the customers in question, primarily MSMEs, who prefer to purchase tertiary range products from the Respondents because these products are relatively cheaper and are in demand in the informal sector which is mainly offered to customers as braaied Kapana at entertainment establishments mostly bars, parties, cultural festivals and at open markets.

Given that these MSMEs serve informal settlements, they often opt for tertiary range products, which align with their customers' needs, as opposed to the higher-priced poultry products that are less suited to their target market as explained above.

Accordingly, it is the Commission's position that tertiary range poultry products, which are at the heart of the conduct under investigation, cannot be considered substitutable or interchangeable with other poultry products. This is more so due to the fact that, there are no other producers of poultry related tertiary range products such as those from turkey, duck, emu, goose or bush birds in Namibia. If this was the case, such tertiary range poultry products could possibly be interchangeable or substitutable with tertiary range poultry products from chickens.

Thus, it is the Commission's considered view that the Respondents are dominant by virtue of NPI being the only commercial producer of poultry products in Namibia accounting for 74% of the entire poultry industry in Namibia with 26% of that market distributed among poultry traders (importers and distributors) through the allocation of import quota amounting to 1200 tonnes per month by the MIT. NPI is responsible for producing about 3500



tonnes of poultry products per month. Being the largest sole producer of poultry products in Namibia automatically qualifies NPI as a dominant undertaking in the relevant market. Namib Mills is the sole distributor of all NPI poultry products to customers, also making Namib Mills dominant in that sphere of the market.

Furthermore, Namib Mills is the exclusive distributor of all NPI poultry products to customers, further establishing its dominance in this market segment. The real goods chicken brand is the only local brand of packaged poultry products which can be found in the Namibian wholesalers and retailers which is the NPI chicken brand. Other producers such as Oyeno do not commercially produce and supply poultry products to the formal and informal market in Namibia thus making them absolute to NPI.

Therefore, the Commission's position is clear, the Respondents are dominant in the relevant market as defined, both in terms of production and distribution.

**3.5.6 If the Respondents are dominant in the relevant market, whether their conduct amounts to an abuse of a dominant position by indirectly imposing unfair purchase or selling prices or other trading conditions, limiting or restricting production, market access, investment, technical development or technological progress and applying of dissimilar conditions as envisaged in section 26(1) read with sections 26(2)(a), 26(2)(b) and 26(2)(c) of the Act?**

Having established that the Respondents are dominant in the relevant market, they are likely to abuse their dominance in that market. It is the Commission's position that the Respondents have abused their dominance by virtue of refusing to supply tertiary range poultry products specifically to certain MSMEs for a period of 6 months which evidence is in possession of the Commission.

- 3.6 As such it is found that the Respondents have jointly contravened section 23(1) read with sections 23(2)(b), 23(3)(b), 23(3)(e), 23(3)(f) and section 26(1) read with sections 26(2)(a), 26(2)(b) and 26(2)(c) of the Act.
- 3.7 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.

**A. P. ITHINDI**  
**BOARD CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

18 December 2024