



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 17 2012

NOTICE IN TERMS OF SECTION 67(3) OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)

The Communications Regulatory Authority of Namibia, in terms of section 67(3) of the Competition Act, 2003 (Act No. 2 of 2003), herewith gives notice that it has entered into an agreement with the Namibian Competition Commission, dated 15th of December 2011. (Attached hereto)

In terms of Sections 33 and 34(1) of the Communications Act, (Act No. 8 of 2009), the Communications Regulatory Authority of Namibia, is authorised to promote competition in the market for the supply of telecommunications and broadcasting services and products, and to promote, develop and enforce fair competition and equality of treatment among all providers of telecommunications and broadcasting users of such services.

Section 67 of the Competition Act, 2003 (Act No. 2 of 2003) mandates the Namibian Competition Commission with the responsibility to negotiate cooperation agreements with any regulatory authority with which it shares concurrent jurisdiction over competition matters in order to ensure consistent application of the principles of the Competition Act.

The purpose of the agreement is to enable the Authorities to coordinate and harmonise the exercise of their jurisdiction over matters of mutual interest and to secure the consistent application of their

respective laws governing anti-competitive behaviour, as well as mergers and acquisitions in the information communication technology sector.

S. SHANAPINDA
CHIEF EXECUTIVE OFFICER

MEMORANDUM OF AGREEMENT

entered into between

NAMIBIAN COMPETITION COMMISSION
(hereinafter referred to as “**the NaCC**”)

and

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA
(hereinafter referred to as “**the CRAN**”)

(hereinafter jointly referred to as “the Authorities”)

WHEREAS the NaCC is established in terms of section 4 of the Competition Act, 2003 (Act No. 2 of 2003) (“**the Competition Act**”) as an independent body with jurisdiction throughout Namibia over all matters related to enterprise competition in order to safeguard and promote competition in the Namibian market through the prevention and control of restrictive business practices and the regulation of mergers and acquisitions:

AND WHEREAS the NaCC, in terms of section 67 of the Competition Act, has the responsibility to negotiate cooperation agreements with any regulatory authority with whom it shares concurrent jurisdiction over competition matters in order to ensure the consistent application of the principles of the Competition Act;

AND WHEREAS the CRAN is established in terms of section 4 of the Communications Act, 2009 (Act No. 8 of 2009) (“**the Communications Act**”) as a juristic person tasked with regulating the telecommunications, broadcasting and postal services industries in Namibia, including competition issues in these sectors;

AND WHEREAS the CRAN, in terms of sections 33 and 34(1) of the Communications Act, is authorised to promote competition in a market for the supply of telecommunications and broadcasting services and products and promote, develop and enforce fair competition and equality of treatment among all providers of telecommunications and broadcasting services and users of such services;

AND WHEREAS the CRAN, in terms of section 34(2) of the Communications Act, subject to section 67 of the Competition Act, has the jurisdiction to investigate, enforce and authorise any breach of the competition rules contained in section 33 of the Communications Act;

AND WHEREAS the Authorities seek to coordinate and harmonise the exercise of their jurisdiction over matters of mutual interest and to secure the consistent application of their respective laws governing anti-competitive behaviour, as well as mergers and acquisitions in the information and communications technology sector (hereinafter referred to as “the ICT sector”) on the basis of the procedures outlined in this Agreement:

NOW THEREFORE THE AUTHORITIES RECORD THEIR AGREEMENT AS FOLLOWS:**1. PURPOSE AND BASIS OF THE AGREEMENT**

- 1.1 This Memorandum of Agreement establishes a framework whereby the Authorities will seek to:
- 1.1.1 promote and maintain fair market competition in the ICT sector;
 - 1.1.2 promote cooperation and coordination between the Authorities when dealing with cases of anti-competitive behaviour, as well as to facilitate the treatment of mergers and acquisitions within the ICT sector;
 - 1.1.3 minimise the duplication of activities, wherever possible; and
 - 1.1.4 improve understanding of their respective roles by undertaking general studies on the effectiveness of competition within the Namibian ICT sector,
- 1.2 This Agreement is entered into in order to establish the manner in which the Authorities will interact and cooperate with each other with the understanding that the laws applicable to each Authority are different, but complementary.
- 1.3 Given the complementarity of the powers and responsibilities of the two Authorities relating to the regulation of competition in the ICT sector, the Authorities must consult with each other at least annually to discuss competition policy.
- 1.4 This Agreement is entered into on the basis of mutual respect and in a spirit of goodwill, and does not affect the independence, or limit the powers of the two Authorities.

2. COMPLAINTS RELATED TO RESTRICTIVE BUSINESS PRACTICES

- 2.1 Where a complaint is lodged pertaining to, or where the Authorities identify a restrictive business practice in the ICT sector, the following process shall be followed:
- 2.1.1 The Authority that receives the complaint (“the Recipient Authority”) shall ensure that the complaint is made available to the other Authority within seven (7) working days (excluding weekends and public holidays);
 - 2.1.2 The Recipient Authority shall inform the complainant(s) that the matter will be discussed jointly by the Authorities in order to establish how the complaint is to be dealt with;
 - 2.1.3 The Authorities shall consult with each other and evaluate the complaint in order to establish whether the matter will be dealt with by either or both Authorities;
 - 2.1.4 The Recipient Authority shall advise the complainant(s) of the decision resulting from the joint discussion between the Authorities;
 - 2.1.5 The Recipient Authority shall give the complainant(s) further directions regarding the outcome of the complaint in question;
 - 2.1.6 In the event that the matter is allocated to the NaCC, delegates from the CRAN may participate in an advisory capacity in the matter, and *vice versa*;
 - 2.1.7 The Authorities may establish joint working committees in the event that it is decided to deal with a matter jointly.
- 2.2 The procedure in clause 2.1 is adopted to ensure that proceedings of such complaints are not unduly duplicated and to avoid separate penalties being imposed in respect of the same dispute / matter.
- 2.3 If it is decided in the consultation process contemplated in clause 2.1 that the CRAN will deal with the matter, then the NaCC may keep its investigation in abeyance, pending the preliminary outcome of the CRAN’s enquiry, and *vice versa*.
- 2.4 When the two Authorities consult with each other as contemplated in this Agreement, they shall do so free of charge to each other.

- 2.5 During the consultative processes envisaged in this Agreement the two Authorities shall act as expeditiously as circumstances permit and shall on both sides facilitate that the other party achieve a timely response.

3. APPLICATION FOR APPROVAL WITH REGARD TO MERGERS AND ACQUISITIONS

- 3.1 Where a merger transaction and/or acquisition requires the approval of both Authorities, the merging parties shall submit separate and concurrent applications to the NaCC (in accordance with the Competition Act) and to the CRAN (in accordance with the Communications Act) for their respective consideration.
- 3.2 The Authorities shall thereafter make independent determinations on the basis of the criteria and mandates of their respective legislation. In arriving at these determinations the NaCC and the CRAN must consult with each other.

4. SHARING OF INFORMATION

- 4.1 Subject to clause 5, the Authorities may exchange such information as may be necessary to give effect to this Agreement.
- 4.2 Where the situation necessitates close cooperation and information sharing between the Authorities, the situation shall be managed in such a way that each Authority shall endeavour to assist the other to the extent possible.

5. CONFIDENTIALITY AND USE OF INFORMATION

- 5.1 Any confidential information shared pursuant to this Agreement shall be used only for lawful regulatory purposes.
- 5.2 The Authorities will maintain the confidentiality of all information received from each other and will not disclose any such information without first obtaining the prior written consent of the providing Authority and then only in accordance with the conditions (if any) attached by that Authority.
- 5.3 All information provided pursuant to this Agreement will remain the property of the Authority providing such information
- 5.4 The sharing of confidential information pursuant to this Agreement is done in reliance upon the foregoing assurances and shall not confer any legal privileges to any person, other than to the parties to this Agreement

6. VARIATION OF THE AGREEMENT

- 6.1 No variation of this Agreement shall have any legal effect, nor be binding upon the Authorities, unless reduced to writing and signed by both parties.

7. EFFECTIVE DATE AND DURATION OF THE AGREEMENT

- 7.1 This Agreement shall come into force upon the date upon which it is signed by both Authorities.
- 7.2 The Agreement shall remain in force until terminated by one month's prior written notice given by either of the Authorities to the other.

8. PUBLICATION

8.1 This Agreement shall be published in the *Government Gazette* for public information as soon as it has been signed.

9. DOMICILIUM CITANDI ET EXECUTANDI

9.1 The parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this Agreement:

9.1.1 NAMIBIAN COMPETITION COMMISSION

**BPI House
Mezzanine Floor
269 Independence Avenue
Windhoek**

9.1.2 COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

**Communications House
56 Robert Mugabe Avenue
Windhoek**

9.2 The parties may communicate and share information telephonically, electronically or via facsimile for the purposes of this Agreement.

THUS ONE AND SIGNED AT WINDHOEK ON THIS 15th DAY OF DECEMBER OF 2011

Mr. L. Murorua

Chairperson: Namibian Competition Commission

Mr. L. Nghumbilemo Jacobs

Chairperson: Communications Regulatory Authority of Namibia
