



MEDIA STATEMENT
FOR IMMEDIATE RELEASE

NaCC imposes a fine of N\$1 million to Johannes !Gawaxab, Ismael Gei-khoibeb, and Gamma Investments cc for implementing a merger without approval

1. Introduction

The Namibian Competition Commission (the Commission), Mr Johannes !Gawaxab, Mr Ismael Gei-Khoibeb, and Gamma Investments CC (Gamma), entered into a settlement agreement following the Commission's investigation which found that the parties have contravened Chapter 4 of the Competition Act No.2 of 2003 (the Act), for implementing a merger without the approval of the Commission.

To that end, the parties admitted to the Commission that, on 10 June 2020, Mr !Gawaxab sold his members interest in Gamma to Mr Gei-Khoibeb, in contravention of the Act. The parties have also admitted the transaction amounted to a merger in contravention of the Act, and without the prior approval of the Commission.

2. Discussion

The Commission's investigation specifically found that the parties contravened section 44 read with sections 51 and 53 of the Competition Act. In particular, the transaction amounted to a merger as defined and regulated in the Competition Act, as it resulted in Mr Gei-Khoibeb acquiring the majority of the members interest in Gamma, as contemplated in terms of section 42(3)(f) of the Competition Act. The merger falls within the prescribed notification thresholds, and the parties failed to notify the Commission, as required in terms of Section 44 of the Act.

As a result, the parties agree to settle this matter and entered into a settlement agreement with the Commission, wherein they would pay a pecuniary penalty in the amount of N\$1 000 000.00 and implement a compliance programme on Competition law in Namibia. To that end, the settlement agreement entered between the parties and

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EX Officio: Mr. Vitalis Ndalikokule (CEO & Secretary to the Commission)

the Commission was made an order of Court in the High Court on 30 April 2024, in the matter, NAMIBIAN COMPETITION COMMISSION v JOHANNES !GAWAXAB, under High Court case number: HC-MD-CIV-MOT-GEN-2024/00161. Having been made an order of Court, the settlement agreement, shall be in full and final settlement of the investigation and shall conclude the proceedings by the Commission against the parties, pending compliance with the agreement and the order of Court.

3. Economic benefits of Merger regulations

Merger regulation establishes a system of preventive control against increases in market power. This helps to predict the economic effects, and proactively regulate the structure of the economy to ensure that markets operate optimally. The focus is the protection of competition such that a merger does not result in firms attaining market power which can potentially be abused through anti-competitive conducts such as charging of higher prices, changing of service levels, and changing of product quality among others. Thus, all merger transactions meeting merger thresholds are required to be notified for assessment of possible market effects and clearance by the Namibian Competition Commission. This has the benefit of protecting consumers from potential abuses that can result from market dominance. Specifically, the merger assessments aims at ensuring that merging firms will not have the ability to raise prices, reduce quantity and/or quality, and reduce the range of customer service post-merger.

4. Conclusion

The Commission wishes to encourage concerned stakeholders to ensure that they remain in compliance with the Competition Act, specifically Chapter 4. Where stakeholders are not sure whether the transactions they wish to pursue are notifiable or not, the Commission encourages such stakeholders to approach the Commission and seek an advisory opinion before proceeding.

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On behalf of the Office of the CEO and Secretary to the Commission
Namibian Competition Commission

Date: 08 May 2024

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