Africa Competition Guide - Namibia

General

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# Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted.

A Competition Policy was tabled for approval by Cabinet and the Competition Bill is being circulated for comment. The Namibian Competition Commission (“**NaCC**”) expects to submit the final version of the Bill to the Ministry of Industrialisation and Trade by the end of June 2022. The timing for any changes to come into effect is not clear.

# To the extent that there are any market inquiry provisions in your jurisdiction, has the competition authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry? If so, kindly indicate these sectors/industries.

In terms of the current Namibian Competition Act, the NaCC does not have the power to initiate market enquiries, although the Competition Bill makes provision for these powers.

The NaCC has previously conducted market studies into the automotive, franchising, and retail industries in Namibia. Local counsel understand that during 2019, the NaCC researched the banking and housing industries. The NaCC Research Division completed the following studies:

a) Franchising study;

b) Automotive study;

c) Administered prices study, which considered the electricity, port, water and transport sector pricing strategies;

d) Land study, which considered the trend in merger activities in land acquisitions by non-Namibians over the past five years;

e) Price reports on the poultry sector; and

f) Price changes caused by COVID-19 on a basket of goods.

Furthermore, the NaCC Research Division has been undertaking studies concerning the following industries:

a) Banking sector, considering pricing strategies by banks in Namibia;

b) Construction sector, considering the role of procurement and collusive practices, although this has been placed on hold due to budgetary constraints; and

c) Health study, considering the impact of the Namaf judgment and the role of health practitioners in pricings in the market.

# Has the competition authority publicly expressed concern in relation to any industry/sector? If so, kindly indicate these sectors/industries.

The NaCC has not formally and publicly expressed concern in relation to any specific industry or sector. That being said, the NaCC formally and publicly warned schools against entering into exclusive supply agreements with suppliers on the basis that this practice promotes uncompetitive behaviour.

The NaCC considers the aim of research studies to give greater information on sectors and industries to feed into merger and acquisition and economic analysis and investigations, when necessary. The choice of industries in which to undertake market studies is informed by several factors, including the following:

a) public complaints, that may be insufficient to warrant an investigation; and

b) the NaCC’s sector prioritisation exercise (which uses several criteria to rank sectors in terms of priority for studying, and which look at factors such as the prevalence of complaints in those sectors, prevalence of merger and acquisition and economic activity, the sector’s contribution to the macro-economy (GDP, employment, etc.), amongst others.

Additionally, the Minister responsible for Industrialisation and Trade may also request the NaCC to undertake market studies on competition related matters, based on the needs of the Ministry. Therefore, market studies are not necessarily an indication of concern or anticompetitive behaviour only, but rather of a need to better understand the dynamics of those industries to aid enforcement and merger and acquisition analysis.

# Has the competition authority identified any specific sectors as strategic or key sectors for purposes of competition law enforcement? If so, kindly indicate these sectors/industries.

The NaCC has not formally and publicly identified any specific sectors as strategic as key sectors for purposes of competition law enforcement.

# Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by the competition authority.

No. The first, and to date only, dawn raid undertaken by the NaCC occurred between 15 and 17 September 2016, when the NaCC searched and seized data from Puma Namibia at their main office in Windhoek and their refueling facility at the Eros Airport in Windhoek. The investigation concerned a complaint of excessive pricing by Puma Namibia with regard to jet fuel and avgas products sold at the Eros Airport and Ondangwa Airport refueling facilities. Puma Namibia objected to the issue and execution of the warrant in question. The High Court of Namibia heard the main matter on 6 September 2018 and issued judgment on 8 November 2018. The Court ordered that the warrant issued previously be set aside with costs and that all hard copy documents seized as well as all electronic data seized and copied be returned to Puma Namibia within two days of the order. The NaCC appealed to the Supreme Court of Namibia against the judgment by the High Court. The Supreme Court, on 8 September 2020, ordered that the appeal be dismissed with costs.

# Has the competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

The NaCC has not introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic. The NaCC, in a media statement issued on 18 May 2020, formally expressed its concern with, and warned against, significant increases in prices of various products in the wake of the prevailing COVID-19 pandemic following the receipt of various complaints from the public. The complaints related to food and basic consumer items, health and hygiene products, as well as other industries such as construction, transport, accommodation, furniture, household appliances and motor vehicle parts.

The NaCC listed certain items as essential in the prevailing COVID-19 outbreak relating to (i) health and hygiene products; (ii) food and basic consumer items; (iii) any other measure that may be used as a preventative measure against COVID-19; and (iv) any item used for the treatment of potential COVID-19 symptoms.

Complaints relating to listed items will be afforded more priority than the rest of the complaints. The NaCC admitted that it does not have direct consumer protection power, but nevertheless, aims to impose, where legally permissible, remedies in relation to the alleged prevailing price gouging practices absent an adequate consumer protection regulatory framework.

# Has the competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

The NaCC has to yet to taken action against any entities for infringing competition legislation during the COVID-19 pandemic.

# Has the competition authority been proactive in addressing pricing practices of firms through, for example, reaching settlement agreements with firms to cap prices of products / services since? If so, please provide details.

The NaCC listed certain items relating to (i) health and hygiene products; (ii) food and basic consumer items; (iii) any other measure that may be used as a preventative measure against COVID-19; and (iv) any item used for the treatment of potential COVID-19 symptoms as essential in the prevailing COVID-19 outbreak; and has stated that it will prioritise complaints relating to listed items, as opposed to the rest of the complaints relating to price gouging.

# Has the competition authority adopted any new regulations or measures that will apply to firms that are active in the digital market space? If so, please provide details.

The NaCC has not adopted any digital market-specific regulations or measures.

# Has the competition authority identified industries / markets / sectors that it considers to be concentrated? If so, please provide details.

The NaCC has not formally identified industries, markets or sectors that it considers to be concentrated.

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