

MEMORANDUM OF UNDERSTANDING

ENTERED INTO BY AND BETWEEN:

COMPETITION & CONSUMER AUTHORITY (BOTSWANA)



Herein represented by Ms. Tebelelo Pule in her capacity as the Chief Executive Officer being duly authorised thereto.

AND

NAMIBIAN COMPETITION COMMISSION



Herein represented by Mr. Vitalis Ndalikokule in his capacity as the Chief Executive Officer and Secretary to the Commission being duly authorised thereto.

IN THE FIELD OF COMPETITION LAW, ENFORCEMENT AND POLICY

U U-N

PREAMBLE

The Competition & Consumer Authority of Botswana ("CCA") and the Namibian Competition Commission ("NaCC") (hereinafter jointly referred to as the "Parties" and separately as a "Party");

DESIRING to promote cooperation in the field of competition law enforcement and policy;

HAVING regard to Article 40 of the Southern African Customs Union ("SACU") Treaty of 2002; and the Southern African Development Community ("SADC") Declaration on Regional Cooperation in Competition and Consumer Policies of 2009;

CONSIDERING section 5(2)(i) of the Competition Act of Botswana, 2018 (Act No. 4 of 2018) and section 16(1)(b) of the Competition Act of Namibia, 2003 (Act No. 2 of 2003);

AIMING to create favourable conditions for the development of bilateral relations;

DESIRING to ensure conditions for the effective functioning of markets for goods and services;

STRESSING the role of competition in the effective development of the economy; and

BASED on the principles of equality and mutual benefit;

NOW THEREFORE the Parties have reached the following understanding:

ARTICLE 1 DEFINITIONS

In this Memorandum of Understanding (hereinafter referred to as "MOU"), unless the context otherwise indicates—

"**competition law**" means—

- (a) for the Competition & Consumer Authority of Botswana: the Competition Act of Botswana, 2018 (Act No. 4 of 2018);
- (b) for the Namibian Competition Commission: the Competition Act of Namibia, 2003

BT UN

- (Act No. 2 of 2003); and
- (c) any amendments to the above Acts, and such other laws or regulations as the Parties may from time to time agree in writing to be "competition law" for the purposes of this MOU;

"enforcement activity" means any investigation or proceeding conducted by a Party in relation to the competition law it administers and enforces.

ARTICLE 2 COOPERATION

- 2.1. Where both Parties are pursuing enforcement activities with regard to the same or related matters, the Parties will endeavour to cooperate where appropriate and practicable.
- 2.2. Cooperation in terms of this MOU must be consistent with each Party's domestic laws and regulations and, in particular, those protecting confidential information.

ARTICLE 3 COMPETENT AUTHORITIES

- 3.1 The competent authorities responsible for the implementation of this MOU will be—;
- (a) in the case of Botswana, the Competition & Consumer Authority of Botswana;
and
- (b) in the case of Namibia, the Namibian Competition Commission.

ARTICLE 4 FORMS OF COOPERATION

- 4.1 Cooperation under this MOU may include the following activities in the field of competition law enforcement and policy:

BT U-N

- (a) Providing with the fullest mutual assistance possible in investigations or enforcement proceedings pertaining to violation of any laws or regulations under the scope of this MOU, including service of process of companies and individuals located in the requested Party's territory on behalf of the requesting Party;
- (b) Joint planning and initiation of investigations where the Parties have concurrent jurisdictions;
- (c) Sharing experiences in the practical enforcement of competition law;
- (d) Exchanging views on substantive competition policy issues;
- (e) Joint work on the development of scientific and methodological research in the field of competition law enforcement and policy;
- (f) Rendering of technical assistance and exchanges of expert studies;
- (g) Exchanging of information;
- (h) Engaging in staff exchanges; and
- (i) Any other areas of cooperation that may be jointly decided upon by the Parties, including cooperation in areas other than competition law and enforcement and policy, i.e., relating to governance, finance, human resources, information technology etc.

ARTICLE 5
FINANCIAL OBLIGATIONS

The Parties will, with regard to the implementation of this MOU and any activities arising from it, bear its own expenses, unless otherwise agreed upon by the Parties.

□ V-N

ARTICLE 6
CONFIDENTIALITY

- 6.1 No Party will be required to communicate information to the other Party if such communication is prohibited by the domestic laws or regulations of the Party possessing the information, or if it would be incompatible with the interests of that Party in the application of its laws.
- 6.2 In so far as information is communicated, the recipient should, to the extent consistent with its laws, maintain the confidentiality of any such information communicated to it and may not disclose it to any third party without the prior written consent of the other Party.

ARTICLE 7
ESTABLISHMENT OF A JOINT WORKING COMMITTEE

- 7.1 A Joint Working Committee (the "JWC") constituted by representatives of the Parties as nominated by the Parties will be established pursuant to this MoU and will function on an ongoing basis.
- 7.2 The JWC will comprise of Parties' divisional heads responsible for various portfolios such as: Legal Services, Mergers and Monopolies, Competition and Consumer Investigations, Research, Enforcement, Policy, Communications and Advocacy.
- 7.3 The JWC will meet on an annual basis for the purposes of planning joint activities for the year and updating each other on various developments in competition law enforcement and policy in their jurisdiction.
- 7.4 In addition to annual meetings, the JWC will meet as and when necessary to discuss issues of common interest and cooperation and utilise media platforms (email, skype, zoom etc.) to communicate issues.
- 7.5 The functions of the JWC will include;
- (a) Management and facilitation of meetings, cooperation and consultation in respect of matters dealt with by each Party in terms of this MOU;

WJ V-N

- (b) Proposition, when necessary, any amendment of or supplementation to this MOU;
- (c) Advisory services to the Parties on issues affecting efficient and effective cooperation and implementation of the MOU and solutions thereto; and
- (d) Any matter connected to or incidental to the MOU.

7.6. The Parties will each elect a contact person and avail their particulars and contact details to the other Party. The contact persons will be responsible for facilitating timeous assistance for requests for information and any matter connected to or incidental to the MOU.

ARTICLE 8
OBLIGATIONS UNDER INTERNATIONAL LAW

- 8.1. This MOU will not affect the rights and obligations of the Parties arising from other international agreements to which they are Party.
- 8.2. The provisions of this MOU are not designated to create any legal rights or obligations under international law.

ARTICLE 9
SETTLEMENT OF DISPUTES

Any difference or dispute arising from the interpretation, application or implementation of this MOU shall be resolved amicably through consultation or negotiations between the Parties, without recourse to an international court.

ARTICLE 10
REPRESENTING AUTHORITIES

10.1 The Parties will be represented herein by the following authorities:

□ V-N

10.1.1 **For the Competition and Consumer Authority (Botswana):**

Ms. Tebelelo Pule

Chief Executive Officer

Competition and Consumer Authority

Plot 28 Matsitama Road, Main Mall, Gaborone

Private Bag 00101

Gaborone

Botswana

+2673934278

Email address: kmodongo@cca.co.bw

tpule@cca.co.bw

10.1.2 **For the Namibian Competition Commission:**

Mr. Vitalis Ndalikokule

Chief Executive Officer and Secretary to the Commission

The Namibian Competition Commission

Namibia Trade Forum Building,

15 Eugene Marais Street,

Tel: +264 61224622

P. O. Box 2104

TA N-N

Windhoek, Namibia

Email address: loide.baard@nacc.com.na

vittalis.ndalikorokule@nacc.com.na

10.2 The Parties agree that any notice –:

10.2.1 posted by registered letter to their respective chosen postal addresses, will be deemed to have been received by the addressee within ten (15) days from the date on which it was posted; or_

10.2.2 mailed to them to their respective chosen email addresses, will be deemed to have been received by the addressee on the first business day following the date of delivery of the mail as evidenced by a delivery receipt; or

10.2.3 delivered by hand to their respective chosen physical addresses, will be deemed to have been received by the addressee on the day of delivery.

ARTICLE 11
AMENDMENT

The provision of this MoU may be amended at any time by mutual written and signed consent of the Parties. Such amendment will form an integral part of this MoU.

ARTICLE 12
ENTRY INTO FORCE, DURATION AND TERMINATION

12.1. This MOU will enter into force on the date of signature of the Party signing last in time.

12.2. This MOU will remain in force for a period of three years from the date of signature of the Party signing last in time.

✍ V-N

12.3. This MOU may be terminated by either Party by giving two (2) months' written notice in advance to the other Party of its intention to terminate it.


12.4. The termination of this MOU will not affect any activities, programs and projects undertaken by the Parties prior to the termination thereof, or the full execution of any cooperative activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the Parties.

ARTICLE 13
GOVERNING LAW


Any activities to be undertaken under this MoU in the territory of any of the Parties will be governed by the laws of that Party.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed and sealed this MOU in two originals in the English language.

DONE at Gaborone on this 23rd day of May 2023.



**FOR COMPETITION AND
CONSUMER AUTHORITY
BOTSWANA**



**FOR THE NAMIBIAN COMPETITION
COMMISSION**