



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 463

2016

NOTICE OF RECEIPT OF APPLICATION FOR EXEMPTION IN RESPECT OF CERTAIN
RESTRICTIVE PRACTICES: PROFESSIONAL PROVIDENT SOCIETY INSURANCE
COMPANY LIMITED; PROFESSIONAL PROVIDENT SOCIETY INSURANCE COMPANY
NAMIBIA; SANLAM LIFE NAMIBIA LIMITED; AND SANLAM NAMIBIA LIMITED
CASE NO: 2016SAN0001EXEMP

Competition Act, 2003 (Act No. 2 of 2003)
(Section 27(3), Rule 21(2))

1. Notice is hereby given in terms of section 27(3) of the Competition Act, 2003 (No. 2 of 2003) ("the Competition Act") that the Professional Provident Society Insurance Company Limited ("PPS"), Professional Provident Society Insurance Company Namibia Limited ("PPS Namibia"), Sanlam Life Namibia ("SNL Life") and Sanlam Namibia Limited ("SNL") have applied to the Namibian Competition Commission ("the Commission"), in terms of section

- 27(1) of the Competition Act, to be exempted from certain provisions of Part 1 of Chapter 3 of the Competition Act.
2. The PPS, PPS Namibia, SNL Life and SNL have submitted the exemption application as joint Applicants, and shall hereafter be referred to as “the Applicants”.
 3. The Applicants operate in the market for the provision of long term insurance in Namibia. The Applicants seek exemption for a marketing agreement dated 12 September 2011 (“the agreement”) in so far as it relates to white labelled products and all conduct ancillary and incidental thereto. The Applicants seek exemption for twenty (20) years from the provisions of the Competition Act in respect of the following conduct that arises from the proposed agreement:
 - 3.1 The development, sale and distribution of a particular suite of life, disability and dread disease products, issued and administered by SNL on behalf of PPS Namibia and white labelled as a PPS Namibia product.
 4. The Applicants seek to be exempted from application of the following provisions of Chapter 3 of the Competition Act in accordance with section 27 of the Competition Act and Rule 21 of the Rules made under the Competition Act:
 - 4.1 Section 23(3)(a) of the Competition Act, insofar as the practice contemplated could be perceived as directly or indirectly fixing purchase or selling prices or other trading conditions;
 - 4.2 Section 23(3)(b) of the Competition Act, insofar as the practice contemplated could be perceived as dividing markets by allocating customers, suppliers, areas or specific types of goods or services; and
 - 4.3 Section 23(3)(e) of the Competition Act, insofar as the practice contemplated could be perceived as limiting or controlling production, market outlets or access, technical development or investment.
 5. Interested persons are invited to submit to the Commission, within 30 days as from the date of this notice, any queries or written representations that they may wish to make concerning the application.
 6. Such representations should be directed to Ms. Nangosora Ashley Tjipitua, Director of Restrictive Business Practices, contact number: 061-224 622, email: ashley.tjipitua@nacc.com.na or alternatively hand delivered at the Namibian Competition Commission, office No.14, BPI House, Mezzanine floor, Independence Avenue, Windhoek.

V. NDALIKOKULE
ACTING SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 464

2016

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT: EXECUTIVE
TRADING EIGHT CC T/A LIFELINK // NAMIBIA RESCUE SERVICES (PTY) LTD T/A
E-MED RESCUE 24 AND SEVERAL OTHERS
CASE NUMBER: 2013FEB0002COMP

Competition Act, 2003 (Act No. 2 of 2003)
(Section 41, Rule 20(1))

1. The Commission on 28 February 2013 received a complaint from Executive Trading Eight CC t/a LifeLink Emergency Rescue Services (LifeLink) which resulted in an investigation against the following undertakings:
 - 1.1 Namibia Rescue Services (Pty) Ltd t/a E-Med Rescue 24 (E-Med);
 - 1.2 Namibia Medical Care Medical Aid Fund (NMC);
 - 1.3 Namibia Health Plan Medical Aid Fund (NHP);
 - 1.4 Renaissance Health Medical Aid Fund (Renaissance);
 - 1.5 Nammed Medical Aid Fund (Nammed);
 - 1.6 the Public Service Medical Aid Scheme (PSEMAS);
 - 1.7 Bankmed Namibia (Bankmed);
 - 1.8 Namdeb Medical Scheme (Namdeb);
 - 1.9 Napotel Medical Aid Fund (Napotel);
 - 1.10 Roads Contractor Company Medical Scheme (RCC) and
 - 1.11 Woermann Brock Medical Aid Fund (WB)
(collectively referred herein as “the Respondents”).
2. The Commission on 15 July 2016 gave notice of its final determination under Government Gazette Notice No. 6071, General Notice No. 244 of 2016, namely that section 23(1) read with section 23(2)(b) and 23(3)(e), and section 26(1) read with section 26(2)(b) of the Competition Act, 2003 (Act No. 2 of 2003) (the Act) have been contravened by E-Med, NHP, NMC, Bankmed, Renaissance, Nammed, Namdeb, Napotel and RCC. However, before the Commission could proceed and institute Court proceedings in accordance with Section 38 of the Act, E-Med approached the Commission for settlement on 23 August 2016. This culminated in the conclusion of a Consent Agreement in conformance with section 40 of the Act dated 19 October 2016.
3. The Commission accordingly gives notice that it intends to submit the attached Consent Agreement with Namibia Rescue Services (Pty) Ltd t/a E-Med Rescue 24 to the Court for confirmation as an order of the Court as contemplated in section 40(1) of the Act.
4. The nature of the conduct that is the subject of the Consent Agreement is:

- 4.1 That the conduct relating to the Preferred Service Provider Agreements:
- 4.1.1 constitutes agreements between parties in a vertical relationship which have the object or effect of preventing or lessening competition by limiting market outlets or access in contravention of section 23(1) read with section 23(2)(b) and section 23(3)(e) of the Act; and
- 4.1.2 amount to an abuse of a dominant position by limiting market access or outlets in contravention of section 26(1) read with section 26(2)(b) of the Act.
5. The attached Consent Agreement, once confirmed by Court, constitutes full and final settlement between E-Med and the Commission in respect of case no. 2013FEB0002COMP.

**V. NDALIKOKULE
ACTING SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

IN THE HIGH COURT OF NAMIBIA

(Main Division)

CASE NO.:

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

NAMIBIAN RESCUE SERVICES (PTY) LTD VA E-MED RESCUE 24

**CONSENT AGREEMENT BETWEEN THE APPLICANT ON THE ONE HAND AND
THE RESPONDENT ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION
PERTAINING TO ALLEGED CONTRAVENTION OF SECTION 23 AND SECTION 26
OF THE COMPETITION ACT NO. 2 OF 2003**

WHEREAS the Commission received a complaint and started an investigation into the conduct of the Respondent for an alleged contravention of section 23(1) read with sections 23(2)(b), 23(3)(e), 26(1) and 26(2)(b) of the Act.

AND WHEREAS the Respondent, in settlement of the investigation by the Commission under case number: 2013FEB0002COMP, has decided to enter into a Consent Agreement as contemplated in section 40(1) of the Act.

NOW THEREFORE the Commission and the Respondent hereby agree that an application be made to the High Court of Namibia for confirmation of this Consent Agreement as an order of the High Court of Namibia in terms of section 40 read with section 52 of the Act in the terms set out below:

1. DEFINITIONS

In this Consent Agreement, unless the context indicates otherwise, the following definitions shall apply:

1.1 “Act” means the Competition Act No. 2 of 2003;

- 1.2 **“Commission”** means the Namibian Competition Commission, a juristic person as established in terms of section 4 of the Act;
- 1.3 **“Complaint”** means the complaint received by the Commission under case number 2013FEB0002COMP, in terms of Rule 15 of the Rules made under the Act as promulgated in Government Notice No. 54 of 2008, General Notice No. 41;
- 1.4 **“Consent Agreement”** means this Consent Agreement, duly signed and concluded between the Commission and the Respondent, as contemplated in section 40(1) of the Act;
- 1.5 **“investigation”** means the investigation into the Complaint received by the Commission in terms of section 33(1) of the Act;
- 1.6 **“Preferred Service Provider Agreements”** means exclusive agreements entered into between the Respondent and the medical aid funds during November 2012 and February 2013; and
- 1.7 **“Respondent”** means:
- 1.7.1 Namibia Rescue Services (Pty) Ltd t/a E-med Rescue 24 a company duly incorporated in accordance with the laws of the Republic of Namibia.

2. CONDUCT

- 2.1 The Commission has found that the conduct related to the Preferred Service Provider Agreements concluded between the Respondents and the medical aid funds contravened section 23(1) read with sections 23(2)(b), 23(3)(e), 26(1) and 26(2)(b) of the Act.
- 2.2 The Commission and the Respondent have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

3. ADMISSION OF LIABILITY

The Respondent admits that as a result of historical happenstance in the paramedical industry, the Preferred Service Provider Agreements constitute an unintended contravention of section 23(1) read with sections 23(2)(b), 23(3)(e), 26(1) and 26(2)(b) of the Act.

4. CESSATION OF CONDUCT

- 4.1 The Respondent shall immediately take all steps to ensure that the Preferred Service Provider Agreements are ceased with immediate effect. In so doing the Respondent has obtained oral undertakings from the respective Medical Aid Funds in order to ensure that:
- 4.1.1 no medical aid fund promotes or refers to the Respondent as the preferred service provider in communication to their members;
- 4.1.2 all communication from the Medical Aid Funds to members providing contact details of emergency service providers shall contain the details of at least two or more qualified emergency service providers; and
- 4.1.3 it no longer authorizes any inter-hospital transfers, such authorization shall become the responsibility of the respective medical aid funds.

- 4.2 In order to ensure the continuity of the essential service provided by the Respondent and to ensure that members are not adversely affected by the implementation of this Consent Agreement, the Respondent may conclude a Monitoring and Response Agreement with the respective Medical Aid Funds and or insurer provided that such agreement does not in any way contravene the provisions of the Act.

5. COMPLIANCE PROGRAMME

- 5.1 In addition to the above, the Respondent will develop and implement a compliance programme on competition law in Namibia to ensure that its employees, management and directors do not engage in any conduct that is prohibited in terms of the Act;
- 5.2 A copy of the compliance programme will be supplied to the Commission within sixty (60) days of the date of confirmation of the Consent Agreement as an order of Court;
- 5.3 The Respondent shall produce a compliance programme progress report six (6) months after date of confirmation of the consent agreement as an order of Court and subsequently at any future date if and when requested to do so by the Commission.

6. AGREEMENT CONCERNING FUTURE CONDUCT

- 6.1 The Respondent will prepare a statement summarising the content of the Consent Agreement to its employees who are in management within thirty (30) days of the date of the confirmation of the Consent Agreement as an order of the Court.
- 6.2 The Respondent shall act in accordance with the terms of the Consent Agreement and will refrain from engaging in conduct contrary to the provisions of the Act.

7. PENALTY

- 7.1 The Respondent will pay a penalty of N\$2 700 000.00 (two million, seven hundred thousand Namibian dollars).
- 7.2 The Respondent will pay the amount within a period of two years (24 months) after the Consent Agreement is confirmed as an order of the Court.
- 7.3 The Respondent shall remit payment of the penalty into the following bank account:

Name of Account holder:	NAMIBIAN COMPETITION COMMISSION
Bank Name:	BANK WINDHOEK
Account Number:	8001663543
Branch:	Main Branch
Branch code:	481972
Reference:	2013FEB0002COMP

The penalty will be paid over by the Commission into the State Revenue Fund in accordance with the provisions of section 53(5) of the Act.

8. COURT ORDER

- 8.1 The Consent Agreement is conditional upon it being confirmed as an order of the Court. Should the Court not confirm the Consent Agreement, all terms of the Consent Agreement shall lapse and have no force and effect and will not be used as evidence against the Respondent in any proceeding whatsoever.

- 8.2** Each party will carry its own costs of the application to the Court for confirmation of the Consent Agreement

9. FULL AND FINAL SETTLEMENT

The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Complaints and shall conclude the proceedings under case number 2013FEB0002COMP in respect of the Respondent.
