



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$8.00

WINDHOEK - 9 February 2022

No. 7742

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 51

2022

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003

The Namibian Competition Commission, in terms of Section 41 of the Competition Act, 2003 (Act No. 2 of 2003), herewith gives notice that it intends to submit to the Court for confirmation as an order of the Court, a consent agreement entered into with Greg's Motor Spares (Pty) Ltd on 20 January 2022.

Section 40 of the Competition Act mandates the Namibian Competition Commission to enter into settlement agreements with the undertaking or undertakings concerned, setting out the terms to be submitted by the Commission by application to the Court for confirmation as an order of the Court.

The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Investigation and shall conclude the proceedings under case number 2017JAN0002COMP and case number.: HC-MD-CIV-ACT-OTH-2021/03064 in respect of Greg's Motor Spares (Pty) Ltd.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION

Windhoek, 26 January 2022

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

APPLICANT

and

GREG'S MOTOR SPARES (PTY) LTD

RESPONDENT

CONSENT AGREEMENT BETWEEN THE APPLICANT ON THE ONE HAND AND THE RESPONDENT ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION PERTAINING TO AN ALLEGED CONTRAVENTION OF SECTION 23(1) AS READ WITH SECTIONS 23(2)(B), 23(3)(E) AND 23(3)(F) OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)

WHEREAS the Commission upon the receipt of information decided to initiate 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) and 23(3)(f) of the Act.

AND WHEREAS the Commission has instituted action against the Respondent (as the fifth defendant) in the High Court of Namibia under Case No.: HC-MD-CIV-ACT-OTH-2021/03064 for the relief as set out in the particulars of claim dated 10 August 2021.

ANDWHEREAS the Respondent defended the action.

ANDWHEREAS the Respondent, in settlement of the investigation by the Commission under case number: 2017JAN0002COMP and the High Court proceedings under case number: HC-MD-CIV-ACT-OTH-2021/03064 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, 2003 (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 **“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.
- 1.4 **“Day(s)”** means calendar days.
- 1.5 **“High Court proceedings”** means the action proceedings initiated in the High Court of Namibia by the Commission against the Respondent under case number.: HC-MD-CIV-ACT-OTH-2021/03064 on 12 August 2021 wherein the Commission is the plaintiff and the Respondent is the fifth defendant.

- 1.6 **“Investigation”** means the investigation initiated against the Respondent by the Commission in terms of section 33(1) of the Act under case number 2017JAN0002COMP.
- 1.7 **“Respondent”** means **GREG’S MOTOR SPARES (PTY) LTD**, a company a duly incorporated in accordance with the laws of the Republic of Namibia.

2. CONDUCT

- 2.1 The Commission’s Investigation found that the Respondent contravened section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Act by entering into exclusive agreements which affords preferential rights, sole distribution rights, waiving of excess fees and rebates to the respondents.

3. ADMISSION OF LIABILITY

- 3.1 The Respondent admits that its Conduct constitutes an unintended contravention of section 23 of the Act.
- 3.2 The Commission and the Respondent therefore agree to settle the Investigation and High Court proceedings on the terms and conditions herein in full and final settlement.

4. CESSATION OF CONDUCT

- 4.1 The Respondent records it has ceased the Conduct and shall take all necessary steps to ensure that it does not engage in the Conduct in future.

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, directors or any other party acting on its behalf does 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 the submission of the compliance programme to the Commission as contemplated by paragraph 5.2 above 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 this Consent Agreement as an order of the Court and shall provide the Commission with a copy thereof within (40) days of the date of the confirmation of this Consent Agreement as an order of the Court.
- 6.2 The Respondent shall act in accordance with the terms of this Consent Agreement and shall implement the following measures:
- 6.2.1 Review all its policies, practices and operations by way of internal audits.

- 6.2.2 Invest in the education of its staff on an ongoing basis on matters pertaining to competition law compliance in Namibia.
- 6.2.3 Actively engage the Commission by obtaining advisory opinions to assist in identifying and implementing best practices.
- 6.2.4 Implement a zero-tolerance policy towards anti-competitive behaviour by its staff.

7. SETTLEMENT AMOUNT

- 7.1 The Respondent agrees to pay a total settlement amount of N\$1 250 000.00 (One Million Two Hundred and Fifty Thousand Namibian dollars) comprised as follows:
 - 7.1.1 A pecuniary penalty of N\$875 000 (Eight Hundred and Seventy-Five Thousand Namibian dollars); and
 - 7.1.2 An additional amount of N\$375 000.00 (Three Hundred and Seventy-Five Thousand Namibian dollars) for purposes of covering part of the Commission's costs arising from its Investigation.
- 7.2 The above amounts become payable upon confirmation of this Consent Agreement as an order of the Court, in 3 (three) instalments, with the first instalment being payable within 4 (four) months from the date of this Consent Agreement being made an order of the Court, the second instalment being payable within 8 (eight) months from the date of this Consent Agreement being made an order of the Court, and the third and final instalment being payable within 12 (twelve) months from the date of this Consent Agreement being made 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:	2017JAN0002COMP
- 7.4 The pecuniary 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 for all legal and incidental costs incurred in the High Court proceedings under case number.: HC-MD-CIV-ACT-OTH-2021/03064, including the costs for the confirmation of the Consent Agreement as an order of Court.
- 8.3 Notwithstanding the above, the Respondent shall carry the Commission's costs in respect of the confirmation of this Consent Agreement as an order of Court, if the Respondent for whatever reason repudiates the Consent Agreement or opposes the Commission's application for confirmation of the Consent Agreement by Court.

9. FULL AND FINAL SETTLEMENT

- 9.1 The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Investigation and the High Court proceeding and shall conclude the proceedings under case number 2017JAN0002COMP and case number.: HC-MD-CIV-ACT-OTH-2021/03064 in respect of the Respondent.
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