



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 3 February 2023

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 41

2023

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 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 PG Glass Namibia (Pty) Ltd on 29 November 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 PG Glass Namibia (Pty) Ltd.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

**NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
NAMIBIAN COMPETITION COMMISSION // SANTAM NAMIBIA LIMITED
AND 7 OTHERS (CASE NUMBER: 2017JAN0002COMP)**

Competition Act, 2003
(Section 41, Rule 20(1))

1. The Commission on or about 30 January 2017 and 14 March 2018 initiated an investigation against:
 - 1.1 Santam Namibia Ltd (“Santam”);
 - 1.2 Hollard Insurance Company of Namibia Ltd (“Hollard”);
 - 1.3 Old Mutual Short-Term Insurance Company Ltd (“OMSIC”);
 - 1.4 Momentum Short-Term Insurance Ltd (previously known as Quanta Insurance Ltd) (“Momentum”);
 - 1.5 Greg’s Motor Spares (Pty) Ltd (“Greg’s”);
 - 1.6 Perfect Glass CC (“Perfect Glass”); and
 - 1.7 PG Glass Namibia (Pty) Ltd (“PG Glass”)(jointly referred to as “the Respondents”).
2. The Commission on or about 10 July 2018 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Respondents. On or about 18 December 2019, the Commission issued a Form 7 Notice advising the Respondents that it planned to take action in terms of section 38 of the Act and providing reasons for the Commission’s decision. The Form 7 Notice was published in the Government Gazette on 31 December 2019.
3. In settlement of the investigation by the Commission, the Commission and PG Glass on 29 November 2022 entered into a Consent Agreement in terms of section 40 of the Act. The Commission accordingly gives notice that it intends to submit the attached Consent Agreement with PG Glass to the High Court of Namibia 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. The Commission's Investigation found that the Respondents have 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.
- 4.2. PG Glass admits that its conduct constitutes an unintended contravention of section 23 of the Act.
- 4.3. The Commission and PG Glass have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

Windhoek, 20 January 2023

**IN THE HIGH COURT OF NAMIBIA
(Main Division)**

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

PG GLASS NAMIBIA (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 sixth 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 11 August 2021.

AND WHEREAS the Respondent defended the action.

AND WHEREAS 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 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 12th of August 2021 wherein the Commission is the Plaintiff and the Respondent is the Sixth 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 **PG GLASS (PTY) LTD**, company 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 Respondent.

3. ADMISSION OF LIABILITY

- 3.1 The Respondent disputes the factual findings and interpretation of the Act by the Commission. However, for the purposes of settlement, the Respondent admits, if the interpretation of the Commission is correct, its conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(b), 23(3)(e) and 23(3)(f) 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 forty (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\$ 750 000.00 (Seven Hundred and Fifty Thousand Namibian Dollars)** comprised as follows:
 - 7.1.1 A pecuniary penalty of N\$ 500 000.00 (Five Hundred and Thousand Namibian Dollars); and
 - 7.1.2 An additional amount of N\$ 250 000.00 (Two Hundred and Fifty 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.
- 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 be without prejudice, confidential, and will not be used by the Applicant as evidence against the Respondent in any proceeding, or otherwise, 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, if either of the parties for whatever reason repudiates the Consent Agreement or the Respondent opposes the Commission's application for confirmation of the Consent Agreement by Court, the other party shall carry that party's costs in respect of the confirmation of this Consent Agreement as an order of 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 proceedings and shall conclude the proceedings under case number: 2017JAN0002COMP and case number: HC-MD-CIV-ACT-OTH-2021/03064 in respect of the Respondent.

NAMIBIAN COMPETITION COMMISSION

No. 42

2023

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 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 Beulah Pharmacy CC on 6 December 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 2018JUN0003COMP and case number: HC-MD-CIV-MOT-REV-2022/00335 in respect of Beulah Pharmacy CC.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:

Competition Act, 2003
(Section 41, Rule 20(1))

Concerning:

**NAMIBIAN COMPETITION COMMISSION // PHARMACEUTICAL SOCIETY
OF NAMIBIA (CASE NUMBER: 2018JUN0003COMP)**

1. The Commission initiated an investigation against the above-named respondents on 12 September 2018 and has given notice of its proposed decision during January and February 2020.
2. The Commission gives notice that it intends to submit the attached consent agreement with Beulah Pharmacy CC to the High Court of Namibia for confirmation as an order of Court as contemplated in Section 40(1) of the Act.
3. The nature of the conduct that is the subject of the consent agreement is that;
 - 3.1 The Commission upon receipt of information initiated an investigation on 12 September 2018 against the following undertaking (hereinafter referred to as "the Respondent"):
 - 3.1.1 Beulah Pharmacy CC
4. The Commission investigated the alleged infringement of the Part 1 prohibitions under the Act by the Respondents, and thereafter gave Notice of its proposed decision (Form 6 Notice), as contemplated in section 36(1). The proposed decision and conclusion of the said investigation was that; there was contravention of; section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (herein after referred to as "the Act") by the Respondents by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.
5. Subsequently, the Commission gave Notice (Form 7), on or about 2 December 2021, in which the Commission informed the Respondent of the Commission's intended action, in terms of section 38 of the Act, and reasons for the Commission's decision. The Form 7 Notice was published in the Government Gazette on 20 December 2021.

6. The Respondent admits that its conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act, and as a result, entered into a Consent Agreement in terms of section 40 of the Act with the Commission. The Commission, and the Respondent have therefore agreed to settle the matter on the terms and conditions set out in the attached settlement agreement, being the full and final settlement between them.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

Windhoek, 20 January 2023

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

BEULAH PHARMACY

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)(a) AND/OR 23(2)(b) AND 23(3)(a) OF THE
COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)**

WHEREAS on 12 September 2018, the Commission upon the receipt of information decided to initiate an investigation into the conduct of the Respondent and others for an alleged contravention of section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Act under case number: 2018JUN0003COMP

AND WHEREAS during January and February 2020 the Commission gave notice of its proposed decision in respect of its Investigation and engaged the Respondent further in terms of section 37 of the Act.

AND WHEREAS the Commission following the investigation, considered all representations, including the written representations made in terms of section 36 and the matters raised at the conference held in accordance with section 37 of the Act.

AND WHEREAS on the 2 December 2021 the Commission gave notice of action to be undertaken under section 38 of the Act, in that the Commission decided to institute proceedings in Court against the Respondent and others for an order as follows:

1. Declaring that the Respondents have contravened section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Competition Act;
2. Ordering the Respondents to cease with the conduct;
3. Restraining the Respondents from engaging in the conduct in future;
4. Seeking an appropriate pecuniary penalty against the Respondents in terms of section 53(1) (a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;

5. Ordering the Respondents to pay the costs of the proceedings; and
6. Such further and/or alternative relief as the Court may consider appropriate.

AND WHEREAS the Respondent, in settlement of the Investigation by the Commission under case number: 2018JUN003COMP 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 **“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 **“Investigation”** means the investigation initiated against the Respondent by the Commission in terms of section 33(1) of the Act under case number 2018JUN0003COMP.
- 1.6 **“Respondent”** means **BEULAH PHARMACY** duly registered as Beulah Pharmacy CC with business registration number CC/2011/7470 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)(a) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.

3. ADMISSION OF LIABILITY

- 3.1 The Respondent admits that its Conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act.
- 3.2 The Commission and the Respondent therefore agree to settle this matter 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 summarizing 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 forty (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\$ 40 000.00 (Forty Thousand Namibian Dollars)** comprised as follows:
 - 7.1.1 A pecuniary penalty of N\$ 30 000.00 (Thirty Thousand Namibian Dollars); and
 - 7.1.2 An additional amount of N\$ 10 000.00 (Ten Thousand Namibian Dollars) for purposes of covering part of the Commission's costs arising from its Investigation.
- 7.2 The payment of the above amounts shall be made in 6 instalments of N\$ 6666.67 (Six Thousand Six Hundred and Sixty-Six Namibian Dollars and Sixty-Seven Cents) every four months on or before the last day of each succeeding fourth month.

- 7.3 The above amounts become payable upon confirmation of this Consent Agreement as an order of Court.
- 7.4 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: 2018JUN0003COMP
- 7.5 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 or otherwise, whatsoever.
- 8.2 Each Party will carry its own costs for all legal and incidental costs incurred in the including the costs for the drafting and confirmation of the Consent Agreement as an order of Court.
- 8.3 Notwithstanding the above, if either of the parties for whatever reason repudiate the Consent Agreement or the Respondent opposes the Commission's application for confirmation of the Consent Agreement by Court, the other party shall carry that party's costs in respect of the confirmation of this Consent Agreement as an order of 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 shall conclude the proceedings under case number: 2018JUN0003COMP in respect of the Respondent.

NAMIBIAN COMPETITION COMMISSION

No. 43

2023

NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 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 CeCe Otjo Pharmacy CC on 16 December 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 2018JUN0003COMP and case number: HC-MD-CIV-MOT-REV-2022/00335 in respect of CeCe Otjo Pharmacy CC.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
PHARMACEUTICAL SOCIETY OF NAMIBIA //
NAMIBIAN COMPETITION COMMISSION // (CASE NUMBER: 2018JUN0003COMP)

Competition Act, 2003
(Section 41, Rule 20(1))

1. The Commission on or about 12 September 2018 initiated an investigation against:
 - 1.1 CeCe Otjo Pharmacy CC (“CeCe Otjo”);
(referred to as “the Respondent”).
2. The Commission on or about January and February 2020 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Respondent. On or about 2 December 2021, the Commission issued a Form 7 Notice advising the Respondent that it planned to take action in terms of section 38 of the Act and providing reasons for the Commission’s decision. The Form 7 Notice was published in the Government Gazette on 20 December 2021.
3. In settlement of the investigation by the Commission, the Commission and the Respondent on 16 December 2022 entered into a Consent Agreement in terms of section 40 of the Act. The Commission accordingly gives notice that it intends to submit the attached Consent Agreement with the Respondent to the High Court of Namibia 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 The Commission’s Investigation found that the Respondent have contravened section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.
 - 4.2 The Respondent admits that its conduct constitutes an unintended contravention of section 23 of the Act.
 - 4.3 The Commission and the Respondent have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

Windhoek, 20 January 2023

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

CECE OTJO PHARMACY CC

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)(a) AND/OR 23(2)(b) AND 23(3)(a) OF
THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)**

WHEREAS on 12 September 2018, the Commission upon the receipt of information decided to initiate an investigation into the conduct of the Respondent and others for an alleged contravention of section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Act under case number: 2018JUN0003COMP

AND WHEREAS during January and February 2020 the Commission gave notice of its proposed decision in respect of its Investigation and engaged the Respondent further in terms of section 37 of the Act.

AND WHEREAS the Commission following the investigation, considered all representations, including the written representations made in terms of section 36 and the matters raised at the conference held in accordance with section 37 of the Act.

AND WHEREAS on 2 December 2021 the Commission gave notice of action to be undertaken under section 38 of the Act, in that the Commission decided to institute proceedings in Court against the Respondent and others for an order as follows:

1. Declaring that the Respondents have contravened section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Competition Act;
2. Ordering the Respondents to cease with the conduct;
3. Restraining the Respondents from engaging in the conduct in future;
4. Seeking an appropriate pecuniary penalty against the Respondents in terms of section 53(1) (a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
5. Ordering the Respondents to pay the costs of the proceedings; and
6. Such further and/or alternative relief as the Court may consider appropriate.

AND WHEREAS the Respondent, in settlement of the Investigation by the Commission under case number: 2018JUN003COMP 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 **“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 **“Investigation”** means the investigation initiated against the Respondent by the Commission in terms of section 33(1) of the Act under case number 2018JUN0003COMP.
- 1.6 **“Respondent”** means **CECE OTJO PHARMACY** duly registered as Chrismed Otjomuise CC with business registration number: CC/2014/07841 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)(a) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.

3. ADMISSION OF LIABILITY

- 3.1 The Respondent admits that its Conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act.
- 3.2 The Commission and the Respondent therefore agree to settle this matter 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 forty (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\$ 85 000.00 (Eighty-Five Thousand Namibian Dollars)** comprised as follows:
- 7.1.1 A pecuniary penalty of N\$ 59 500.00 (Fifty-Nine Thousand Five Hundred Namibian Dollars); and
- 7.1.2 An additional amount of N\$ 25 500.00 (Twenty-Five Thousand Five Hundred Namibian Dollars) for purposes of covering part of the Commission's costs arising from its Investigation.
- 7.2 The payment of the above amounts shall be made in 24 monthly instalments on or before the last day of each month.
- 7.3 The above amounts become payable upon confirmation of this Consent Agreement as an order of Court.
- 7.4 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:	2018JUN0003COMP

- 7.5 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 or otherwise, whatsoever.
- 8.2 Each Party will carry its own costs for all legal and incidental costs incurred in the including the costs for the drafting and confirmation of the Consent Agreement as an order of Court.
- 8.3 Notwithstanding the above, if either of the parties for whatever reason repudiate the Consent Agreement or the Respondent opposes the Commission's application for confirmation of the Consent Agreement by Court, the other party shall carry that party's costs in respect of the confirmation of this Consent Agreement as an order of 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 shall conclude the proceedings under case number: 2018JUN0003COMP in respect of the Respondent.

NAMIBIAN COMPETITION COMMISSION

No. 44

2023

**NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003
(ACT NO. 2 OF 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 Chrismed Pharmacy on 18 January 2023.

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 2018JUN0003COMP and case number: HC-MD-CIV-MOT-REV-2022/00335 in respect of Chrismed Pharmacy.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
PHARMACEUTICAL SOCIETY OF NAMIBIA //
NAMIBIAN COMPETITION COMMISSION // (CASE NUMBER: 2018JUN0003COMP)

Competition Act, 2003
(Section 41, Rule 20(1))

1. The Commission on or about 12 September 2018 initiated an investigation against:
 - 1.1 Chrismed Pharmacy (“Chrismed Pharmacy”);

(referred to as “the Respondent”).
2. The Commission on or about January and February 2020 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Respondent. On or about 2 December 2021, the Commission issued a Form 7 Notice advising the Respondent that it planned to take action in terms of section 38 of the Act and providing reasons for the Commission’s decision. The Form 7 Notice was published in the Government Gazette on 20 December 2021.
3. In settlement of the investigation by the Commission, the Commission and Chrismed Pharmacy on 18 January 2023 entered into a Consent Agreement in terms of section 40 of the Act. The Commission accordingly gives notice that it intends to submit the attached Consent Agreement with the Respondent to the High Court of Namibia 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. The Commission’s Investigation found that the Respondent have contravened section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.
 - 4.2. The Respondent admits that its conduct constitutes an unintended contravention of section 23 of the Act.
 - 4.3. The Commission and Respondent have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

Windhoek, 20 January 2023

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

CHRISMED PHARMACY

Respondent

**CONSENT AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT
IN RESPECT OF AN INVESTIGATION PERTAINING TO AN ALLEGED
CONTRAVENTION OF SECTION 23(1) AS READ WITH SECTIONS 23(2)(a) AND/OR
23(2)(b) AND 23(3)(a) OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)**

WHEREAS on 12 September 2018, the Commission upon the receipt of information decided to initiate an investigation into the conduct of the Respondent and others for an alleged contravention of section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Act under case number: 2018JUN0003COMP

AND WHEREAS during January and February 2020 the Commission gave notice of its proposed decision in respect of its Investigation and engaged the Respondent further in terms of section 37 of the Act.

AND WHEREAS the Commission following the investigation, considered all representations, including the written representations made in terms of section 36 and the matters raised at the conference held in accordance with section 37 of the Act.

AND WHEREAS on the 2 December 2021 the Commission gave notice of action to be undertaken under section 38 of the Act, in that the Commission decided to institute proceedings in Court against the Respondent and others for an order as follows:

1. Declaring that the Respondents have contravened section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Competition Act;
2. Ordering the Respondents to cease with the conduct;
3. Restraining the Respondents from engaging in the conduct in future;
4. Seeking an appropriate pecuniary penalty against the Respondents in terms of section 53(1) (a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
5. Ordering the Respondents to pay the costs of the proceedings; and
6. Such further and/or alternative relief as the Court may consider appropriate.

AND WHEREAS the Respondent, in settlement of the Investigation by the Commission under case number: 2018JUN003COMP 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 **“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 **“Investigation”** means the investigation initiated against the Respondent by the Commission in terms of section 33(1) of the Act under case number: 2018JUN0003COMP.
- 1.6 **“Respondent”** means **CHRISMED PHARMACY** duly registered as GLEENHANA CC with business registration number: CC/2011/5528 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)(a) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.

3. ADMISSION OF LIABILITY

- 3.1 The Respondent admits that its Conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act.
- 3.2 The Commission and the Respondent therefore agree to settle this matter 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 forty (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\$ 15 000.00 (Fifteen Thousand Namibian Dollars)** comprised as follows:
- 7.1.1 A pecuniary penalty of N\$ 10 500.00 (Ten Thousand Five Hundred Namibian Dollars); and
- 7.1.2 An additional amount of N\$ 4 500.00 (Four Thousand Five Hundred Namibian Dollars) for purposes of covering part of the Commission's costs arising from its Investigation.
- 7.2 The payment of the above amounts shall be made in 24 monthly instalments on or before the last day of each month.
- 7.3 The above amounts become payable upon confirmation of this Consent Agreement as an order of Court.
- 7.4 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: | 2018JUN0003COMP |
- 7.5 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 or otherwise, whatsoever.
- 8.2 Each Party will carry its own costs for all legal and incidental costs incurred in the including the costs for the drafting and confirmation of the Consent Agreement as an order of Court.
- 8.3 Notwithstanding the above, if either of the parties for whatever reason repudiate the Consent Agreement or the Respondent opposes the Commission's application for confirmation of the Consent Agreement by Court, the other party shall carry that party's costs in respect of the confirmation of this Consent Agreement as an order of 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 shall conclude the proceedings under case number: 2018JUN0003COMP in respect of the Respondent.

NAMIBIAN COMPETITION COMMISSION

No. 45

2023

**NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003
(ACT NO. 2 OF 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 JN Hyper Pharmacy CC on the 21 November 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 2018JUN0003COMP and case number: HC-MD-CIV-MOT-REV-2022/00335 in respect of JN Hyper Pharmacy CC.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
PHARMACEUTICAL SOCIETY OF NAMIBIA //
NAMIBIAN COMPETITION COMMISSION // (CASE NUMBER: 2018JUN0003COMP)

Competition Act, 2003
(Section 41, Rule 20(1))

1. The Commission on or about 12 September 2018 initiated an investigation against:
 - 1.1 JN Hyper Pharmacy CC (“JN Hyper”);

(referred to as “the Respondent”).
2. The Commission on or about January and February 2020 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Respondent. On or about 2 December 2021, the Commission issued a Form 7 Notice advising the Respondent that it planned to take action in terms of section 38 of the Act and providing reasons for the Commission’s decision. The Form 7 Notice was published in the Government Gazette on 20 December 2021.
3. In settlement of the investigation by the Commission, the Commission and JN Hyper on 21 November 2022 entered into a Consent Agreement in terms of section 40 of the Act. The Commission accordingly gives notice that it intends to submit the attached Consent Agreement with JN Hyper to the High Court of Namibia 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. The Commission’s investigation found that the Respondent have contravened section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.
 - 4.2. JN Hyper admits that its conduct constitutes an unintended contravention of section 23 of the Act.
 - 4.3. The Commission and JN Hyper have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

Windhoek, 20 January 2023

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

JN HYPER PHARMACY

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)(a) AND/OR 23(2)(b) AND 23(3)(a)
OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)**

WHEREAS on 12 September 2018, the Commission upon the receipt of information decided to initiate an investigation into the conduct of the Respondent and others for an alleged contravention of section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Act under case number: 2018JUN0003COMP

AND WHEREAS during January and February 2020 the Commission gave notice of its proposed decision in respect of its Investigation and engaged the Respondent further in terms of section 37 of the Act.

AND WHEREAS the Commission following the investigation, considered all representations, including the written representations made in terms of section 36 and the matters raised at the conference held in accordance with section 37 of the Act.

AND WHEREAS on the 2 December 2021 the Commission gave notice of action to be undertaken under section 38 of the Act, in that the Commission decided to institute proceedings in Court against the Respondent and others for an order as follows:

1. Declaring that the Respondents have contravened section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Competition Act;
2. Ordering the Respondents to cease with the conduct;
3. Restraining the Respondents from engaging in the conduct in future;
4. Seeking an appropriate pecuniary penalty against the Respondents in terms of section 53(1) (a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
5. Ordering the Respondents to pay the costs of the proceedings; and
6. Such further and/or alternative relief as the Court may consider appropriate.

AND WHEREAS the Respondent, in settlement of the Investigation by the Commission under case number: 2018JUN003COMP 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 **“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 **“Investigation”** means the investigation initiated against the Respondent by the Commission in terms of section 33(1) of the Act under case number: 2018JUN0003COMP.
- 1.6 **“Respondent”** means **JN HYPER PHARMACY**, duly registered as JN HYPER PHARMACY CC with business registration number: CC/2013/06172 in accordance with the laws of Republic of Namibia.

2. CONDUCT

- 2.1 The Commission’s Investigation found that the Respondent contravened section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.

3. ADMISSION OF LIABILITY

- 3.1 The Respondent admits that its Conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act.
- 3.2 The Commission and the Respondent therefore agree to settle this matter 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 forty (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\$ 60 000.00 (Sixty Thousand Namibian Dollars)** comprised as follows:
- 7.1.1 A pecuniary penalty of N\$ 42 000.00 (Forty-Two Thousand Namibian Dollars); and
- 7.1.2 An additional amount of N\$ 18 000.00 (Eighteen Thousand Namibian Dollars) for purposes of covering part of the Commission's costs arising from its Investigation.
- 7.2 The payment of the above amounts shall be made in 24 monthly instalments on or before the last day of each month.
- 7.3 The above amounts become payable upon confirmation of this Consent Agreement as an order of Court.
- 7.4 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: | 2018JUN0003COMP |
- 7.5 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 or otherwise, whatsoever.
- 8.2 Each Party will carry its own costs for all legal and incidental costs incurred in the including the costs for the drafting and confirmation of the Consent Agreement as an order of Court.
- 8.3 Notwithstanding the above, if either of the parties for whatever reason repudiate the Consent Agreement or the Respondent opposes the Commission's application for confirmation of the Consent Agreement by Court, the other party shall carry that party's costs in respect of the confirmation of this Consent Agreement as an order of 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 shall conclude the proceedings under case number: 2018JUN0003COMP in respect of the Respondent.

NAMIBIAN COMPETITION COMMISSION

No. 46

2023

**NOTICE IN TERMS OF SECTION 41 OF THE COMPETITION ACT, 2003
(ACT NO. 2 OF 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 Medimart Pharmacy on 16 December 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 2018JUN0003COMP and case number: HC-MD-CIV-MOT-REV-2022/00335 in respect of Medimart Pharmacy.

**V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT:
PHARMACEUTICAL SOCIETY OF NAMIBIA //
NAMIBIAN COMPETITION COMMISSION // (CASE NUMBER: 2018JUN0003COMP)

Competition Act, 2003
(Section 41, Rule 20(1))

1. The Commission on or about 12 September 2018 initiated an investigation against:
 - 1.1 Medimart Pharmacy (“Medimart”);

(referred to as “the Respondent”).
2. The Commission on or about January and February 2020 gave notice of its preliminary decision (Form 6 Notice) that section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Competition Act, 2003 (Act No. 2 of 2003) (“the Act”) have been contravened by the Respondent. On or about 2 December 2021, the Commission issued a Form 7 Notice advising the Respondent that it planned to take action in terms of section 38 of the Act and providing reasons for the Commission’s decision. The Form 7 Notice was published in the Government Gazette on 20 December 2021.
3. In settlement of the investigation by the Commission, the Commission and the Respondent on 16 December 2022 entered into a Consent Agreement in terms of section 40 of the Act. The Commission accordingly gives notice that it intends to submit the attached Consent Agreement with the Respondent to the High Court of Namibia 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. The Commission’s Investigation found that the Respondent have contravened section 23(1) read with sections 23(2)(a), 23(2)(b) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.
 - 4.2. The Respondent admits that its conduct constitutes an unintended contravention of section 23 of the Act.
 - 4.3. The Commission and Respondent have therefore agreed to settle the matter on the terms and conditions herein in full and final settlement.

V. NDALIKOKULE
CHIEF EXECUTIVE OFFICER AND
SECRETARY TO THE COMMISSION
NAMIBIAN COMPETITION COMMISSION

Windhoek, 20 January 2023

IN THE HIGH COURT OF NAMIBIA
(Main Division)

In the matter between:

NAMIBIAN COMPETITION COMMISSION

Applicant

and

MEDIMART PHARMACY

Respondent

**CONSENT AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT
IN RESPECT OF AN INVESTIGATION PERTAINING TO AN ALLEGED
CONTRAVENTION OF SECTION 23(1) AS READ WITH SECTIONS 23(2)(a)
AND/OR 23(2)(b) AND 23(3)(a) OF THE COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)**

WHEREAS on 12 September 2018, the Commission upon the receipt of information decided to initiate an investigation into the conduct of the Respondent and others for an alleged contravention of section 23(1) read with sections 23(2)(a) and/or 23(2)(b) and 23(3)(a) of the Act under case number: 2018JUN0003COMP.

AND WHEREAS during January and February 2020 the Commission gave notice of its proposed decision in respect of its Investigation and engaged the Respondent further in terms of section 37 of the Act.

AND WHEREAS the Commission following the investigation, considered all representations, including the written representations made in terms of section 36 and the matters raised at the conference held in accordance with section 37 of the Act.

AND WHEREAS on 2 December 2021 the Commission gave notice of action to be undertaken under section 38 of the Act, in that the Commission decided to institute proceedings in Court against the Respondent and others for an order as follows:

1. Declaring that the Respondents have contravened section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Competition Act;
2. Ordering the Respondents to cease with the conduct;
3. Restraining the Respondents from engaging in the conduct in future;
4. Seeking an appropriate pecuniary penalty against the Respondents in terms of section 53(1) (a) and 53(2) of the Competition Act, taking into account the factors stated in section 53(3) of the Competition Act;
5. Ordering the Respondents to pay the costs of the proceedings; and
6. Such further and/or alternative relief as the Court may consider appropriate.

AND WHEREAS the Respondent, in settlement of the Investigation by the Commission under case number: 2018JUN003COMP 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 “**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 “**Investigation**” means the investigation initiated against the Respondent and others by the Commission in terms of section 33(1) of the Act under case number: 2018JUN0003COMP.
- 1.6 “**Respondent**” means **MEDIMART PHARMACY** duly registered as Chrismed Mall CC with business registration number: CC/2014/07843 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)(a) and 23(3)(a) of the Act by fixing prices through imposition of a 50% mark-up on the dispensing of medicine through its professional association with other members.

3. ADMISSION OF LIABILITY

- 3.1 The Respondent admits that its Conduct constitutes an unintended contravention of section 23(1) read with sections 23(2)(a) and 23(3)(a) of the Act.
- 3.2 The Commission and the Respondent therefore agree to settle this matter 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 forty (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\$ 65 000.00 (Sixty-Five Thousand Namibian Dollars)** comprised as follows:
- 7.1.1 A pecuniary penalty of N\$ 45 500.00 (Forty-Five Thousand Five Hundred Namibian Dollars); and
- 7.1.2 An additional amount of N\$ 19 500.00 (Nineteen Thousand Five Hundred Namibian Dollars) for purposes of covering part of the Commission's costs arising from its Investigation.
- 7.2 The payment of the above amounts shall be made in 24 monthly instalments on or before the last day of each month.
- 7.3 The above amounts become payable upon confirmation of this Consent Agreement as an order of Court.
- 7.4 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:	2018JUN0003COMP

- 7.5 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 or otherwise, whatsoever.
- 8.2 Each Party will carry its own costs for all legal and incidental costs incurred in the including the costs for the drafting and confirmation of the Consent Agreement as an order of Court.
- 8.3 Notwithstanding the above, if either of the parties for whatever reason repudiate the Consent Agreement or the Respondent opposes the Commission's application for confirmation of the Consent Agreement by Court, the other party shall carry that party's costs in respect of the confirmation of this Consent Agreement as an order of 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 shall conclude the proceedings under case number: 2018JUN0003COMP in respect of the Respondent.
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