



Facing the South Atlantic Ocean, between Angola and South Africa, Namibia was the last Southern African country to become independent from foreign occupation in 1990. The colonial system was characterised by racial and ethnic segregation. As such, the Namibian economy is one of contrasts.

Economy

The Namibian economy is characterised by a large, non-tradable sector (government services), and an export oriented primary sector, mainly fisheries, agriculture and mining. Namibia is a small open economy.

Competition Law and Institutions

Competition policy was introduced in 2003 through the Competition Act of 2003 (Act No. 2 of 2003). In the past, competition issues in Namibia have been regulated by the Regulation of Monopolistic Conditions Amendment Act, 1958 (Act 14 of 1958). However, this is a South African Act, which was not applied in Namibia after independence.

Over time, the Government recognised the urgent necessity for a competition policy and, with the assistance of the EU, commissioned a study, which drafted the Competition Bill in 1996. The Government, then established the Steering Advisory Committee on Competition, which widely discussed the Bill with all stakeholders. The Competition Act (Act No.2 of 2003) was passed on April 24, 2003.

Objectives of the Competition Act

The rationale behind competition policy is market failure resulting from market power and externalities. However, the emphasis of competition policy is on market failure arising from the abuse of market power. Apart from enhancing efficient allocation of resources and protecting the public interest, the objectives of the Act include:

- to promote the efficiency, adaptability and development of the Namibian economy;
- to provide consumers with competitive prices and product choices;

PROFILE	
Population:	2.0 million***
GDP (Current US\$):	4.7 billion***
Per Capita Income: (Current US\$)	1,870 (Atlas method)*** 6,210 (at PPP)**
Surface Area:	824.3 thousand sq. km
Life Expectancy:	45.3 years**
Literacy (%):	83.3 (of ages 15 and above)**
HDI Rank:	126***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

- to promote employment, and advance the social and economic welfare of Namibians;
- to expand opportunities for Namibian participation in world markets whilst recognising the role of foreign competition in Namibia;
- to ensure that small undertakings have an equitable opportunity to participate in the Namibian economy; and
- to promote greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.

Anticompetitive Business Practices

The Namibian Competition Act aims to remove or reduce the distorting effects resulting from:

- Collusive practices;
- Abuse of dominant position; and
- Mergers.

Restrictive Agreements, Practices and Decisions

Under the Competition Act, agreements and concerted practices between undertakings, that are considered to have the potential to restrict competition or considered

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detrimental to public interest, are prohibited. The Act prohibits the following conduct:

- Horizontal and vertical collusion;
- Market sharing;
- Collusive tendering;
- Price fixing;
- Minimum resale price maintenance; and
- Bid-rigging.

However, the Act does not prevent a supplier or producer from recommending a resale price, provided that the recommended price is not binding, and the words 'recommended price' appears next to the price. Although the Act covers all economic activities including the States' business engagement in trade and production, or distribution of goods and services, the jurisdiction of the competition policy is boundary restricted and, as such, unable to deal with regional or global strategies adopted by multinational corporations (MNCs).

Exceptions to the Act are collective bargaining activities concluded in terms of the Labour Act, 1992 (Act No. 6 of 1992); concerted conduct designed to achieve non-commercial socio-economic objectives, and goods and services, which the Minister, together with the commission, declare, by notice in the gazette, to be exempted from the provision of the Act.

Abuse of Dominant Position

The Act is meant to curb the behaviour of private enterprises inhibiting the proliferation of competitive market structures, and the efficient allocation of resources, thereby protecting public interest. The Act makes provision for the Minister, either in general or per specific industries, to determine a threshold of annual turnover or value of assets, below which an undertaking is not considered to be in a position of dominance. The Act defines abuse of dominant position to include:

- Direct or indirect imposition of selling prices;
- Restricting production, market access, investments and technical development;
- Applying different conditions to equivalent transactions with other trading parties; and
- Making the conclusion of a contract subject to the acceptance of supplementary conditions, which have no connection with the subject matter of the contract.

Mergers

In support of mergers, firms argue that mergers create efficiencies due to synergies and economies of scale, whilst allowing the merged company to compete in broader markets. However, the main concern, in terms of competition policy, is the possible outcome in terms of firms' behaviour and performance. Imposing merger thresholds, which can be measured in terms of turnover or assets, can control the economic impact of mergers. Mergers represent a major concern since they reduce the

number of brands competing with each other. It might also create conditions for collective dominance, i.e. tacit collusion. Furthermore, it may lead to increased non-price competition, and reduce competition at retail level, thereby creating an entry barrier to smaller rivals.

The Competition Act defines 'a merger to occur when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking'. Thus, a merger entails an acquisition of control through purchase of shares, or assets of other undertakings, and through amalgamation with other undertakings. The Act prohibits all mergers, which will substantially prevent or lessen competition or which are not justified on the grounds of public interest.

Under the Act, the parties to the proposed merger are required to give notice to the Competition Commission, who has the power to carry out an extensive investigation and then determine, within 30 days, by either approving or disapproving the merger. In this instance, the Competition Commission is required to give notice to the parties involved in the proposed merger, in writing and by notice in the Gazette. A merger can be approved or disapproved, based on the effect the merger will have on:

- The extent to which the benefits flow from the proposed merger, in the form of enhanced technical efficiency, increased production, efficient distribution of goods, and access to markets outweighing the negative effects of the merger;
- The extent to which the proposed merger would lessen competition or restrict trade;
- The extent to which the proposed merger would lead to any undertaking (either involved in the merger or not) acquiring a dominant position;
- The extent to which the merger would affect a particular industry or region;
- The extent to which the proposed merger would affect employment;
- The extent to which the proposed merger will affect the ability of SMEs to become Competitive; and
- The extent to which the proposed merger will affect the ability of national industries to compete in international markets.

However, the Act provides the right, for the parties involved, to apply to the Minister to review the Commission's decision. If a merger is implemented in contravention of the provisions of the Act, the Commission may apply for an interdict restraining the parties to the merger from implementing the merger, to declare the agreement void or to impose a penalty.

Exemption of Certain Restrictive Practices

The Act makes provisions for any undertaking to apply for an exemption from certain restrictive practices. Conditional or unconditional exemptions for agreements

or practices may be granted to firms who apply if such an agreement or practice:

- promotes export;
- promotes small undertakings owned by previously disadvantaged persons;
- improves the production or distribution of goods; and
- promotes technical or economic progress in any industry designated by the Minister.

However, the Commission may revoke the exemption if it found out that the exemption was granted on materially incorrect information, that there has been significant change of circumstances since the exemption was granted, or if the condition upon which it was granted has not been complied with.

Sectoral Regulation

Prior to the enactment of the competition law, Namibia introduced different sectoral policies to regulate different industries. These sectoral policies are still in existence. At the moment, telecommunication, electricity, ports, railways, airlines, and airports are franchised monopolies.

Electricity Supply Industry

An independent electricity regulator, the Electricity Control Board (ECB), regulates the Electricity Supply Industry (ESI), in Namibia. The ECB was established under the Electricity Act (Act 2 of 2000), which came into effect in July 2000. The Act requires electricity undertakings to be licensed by the ECB.

The Electricity Act was introduced with the main objective of fostering competition in the generation, distribution and supply of electricity in a vertically integrated industry with monopolies within all segments of the ESI. Thus, the key functions of the electricity board are licensing, electricity pricing, standard setting and enforcing, consumer protection, mediation and dispute resolution, efficiency enforcement and electricity sector development planning.

The ESI restructuring study, carried out by the Government in 2000, found that there is a need to restructure the industry from a non-competitive, vertically integrated system to a more competitive structure. Thus, the ECB embarked upon the restructuring of the ESI, aimed at the creation of a Single Buyer market structure; the creation of Regional Electricity Distributors (REDs); and the introduction of a licensing system, which was approved by the cabinet in 2000.

The Act provides for the establishment of four REDs for the North, West, Central and Southern parts of Namibia, which will be opened up to private sector participation. However, the generation and transmission of electricity is still a monopoly of Nampower, the national electricity provider, whilst various players, including a number of regional and local authorities, carry out distribution.

Transport and Communication Industries

The telecommunication industry had been scheduled to be fully open to competition by the year 2004. The industry is regulated by the Namibia Communication Commission (NCC), created in 1992. Once competition is introduced, the NCC will ensure that competition is taking place on fair and equitable terms.

Telecom Namibia Limited is the national telecommunications operator, established in 1992, and wholly owned by the Government. Telecom Namibia was granted a monopoly licence for five years, with the objective of extending telecommunication services in Namibia to facilitate economic development. The purposes of the period of exclusivity are to allow Telecom Namibia to put up the network and prepare for competition.

Historically, telecommunication has been viewed as a natural monopoly, due to having a network of fixed lines. This means that, in a competitive environment, the service provider would engage in serving only the lucrative market and the areas that do not offer much profit may not receive telecommunication services, even though the community, as a whole, will benefit.

However, due to technological advancements, it has now been realised that not all telecom products are subject to the same cost conditions. This has created a number of close substitutes, which weaken natural monopolistic tendencies. The continued improvements in technology increase consumers' choice of the mode of communication, which further reduces the remaining monopoly power of telecom service providers. This has led to the restructuring of the sector and the introduction of sectoral regulations.

The White Paper on Transport Policy led to the commercialisation of a number of government activities. This led to the creation of the Namibia Airport Company in 1999, Road Contractor and Road Authority, and the Namibia Ports Authority (Namport, 1995). The rail network is owned by the Government and operated by TransNamib Limited.

Financial Sector

The banking sector in Namibia consists of four commercial banks, an investment bank and a savings bank. As it is common with other SACU countries, the banking industry in Namibia is dominated by South African Banks. In addition to the South African Banks, there were two fully Namibian-owned banks, City Savings & Investment Bank and SWABOU Building Society, which merged in April 2002 and became known as SWABOU Bank. However, this institution again merged with First National Bank (FNB) and is now known as FNB SWABOU Holdings. Currently, there is no fully Namibian-owned bank in the country.

Recent studies indicate that there is very little price or product competition in the banking sector. Furthermore, FNB and the Standard Bank dominate the market holding, with about 62 percent of total assets and accounting for 60 percent of total deposits and loans. These two institutions are the price leaders, and competition is limited to non-price issues like services. Thus, there is high market concentration with little effective competition. However, the size of the Namibian market limits the number of players in the banking sector. Therefore, effective competition is very difficult.

The regulation of non-banking financial institutions is done by NAMFISA (Namibia Financial Institution Supervisory Authority), which was established in 2000. Non-bank financial institutions include Contractual Savings Institution (pension funds, long and short-term Insurance), Unit trusts, Cooperatives and Microfinance. With about five companies, the long-term insurance industry is dominated by two companies, owning about 90 percent of total assets. On the other hand, the short-term insurance industry, which has 10 companies, is dominated by five companies, owning about 80 percent of total assets. Unit trusts and cooperatives are new and still developing. Other government initiatives include the Namibian Development Cooperation, the National Housing Enterprise Development Fund of Namibia, Namibian Development Bank, etc.

Consumer Protection

There is no law that cuts clear on issues that protect consumers in Namibia, and hence, it is quite often that one hears dissatisfied consumers crying of poor service and lack of customer care. At present, consumers may be able to take the seller to court, but the process is long, expensive and cumbersome

The Ministry of Trade and Industry has already set in motion the process of drafting the Consumer Protection Act. A consultant has been appointed and is compiling the draft looking at all issues that are necessary and relevant to the protection of consumer. The Act is expected to cover a broad spectrum of issues, such as hire purchases and health. The Government wishes to have a straightforward Consumer Protection Act with less complication. To achieve that stakeholders will be consulted and the draft will be subjected to a national debate.¹

In the future consumers will not only be able to complain and then contact the media out of desperation, but they

will have the power to hold the sellers accountable and subject them to the arm of the law with ease.

The Namibia Consumer Lobby (NCL) was established in 1988 with its main aim of meeting protective needs of the consumer, as well as creating a better understanding between producers and consumers. The NCL has the following as its main functions:

- *Lobbying and advocacy*: To create fair trading practices, NCL serves as a platform for consumers to contribute to policy formulation;
- *Complaints handling*: It works as a main body resolving conflicts between consumers and traders. Furthermore, it monitors price trends through shopping basket surveys, thereby advocating for fair price structure on basic commodities with governments and producers;
- *Education*: the organisation educates consumers about their rights through print media, panel discussions, electronic media, workshops, seminars and meetings; and
- *Referral services*: In cases where the area does not fall under the organisation tasks, it refers the consumers to the right places for assistance.

Whilst the organisation gives advice in a number of cases, it also monitors unethical advertising techniques.

Concluding Observations and Future Scenario

The Namibian Competition Act is still due for enforcement as a law. The Ministry of Trade and Industry is now working on regulations, which will be given to stakeholders for their inputs and the government will then promulgate such regulations and the Act will be enforced.

The Act makes provision for the establishment of the Namibian Competition Commission (NCC), an independent body subjected only to the Namibian constitution and the law. The NCC, as per the Acts' provision and with the approval of the Minister, is empowered to make rules by notice in the gazette, which will then be recognised and enforced as part of the Act.

Although the Ministry has completed the recruitment of the NCC personnel, they are yet to take up activities on enforcement of the Competition Act.

Namibian consumers appear to be under-represented. National institutions, formally representing consumer interest are weak, or non-existent. The Ministry of Trade and Industry, including the NCC are, therefore, expected to vigorously take consumer interests in consideration when dealing with competition issues.

¹ <http://www.economist.com.na/2003/24oct/10-24-11.htm>

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