

| NAMIBIA | | | |
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| COMPETITION FRAMEWORK | | | |
| Competition Law | The Competition Act no. 2 was enacted on April 24, 2003 ("Competition Act"). | | |
| Competition Authority | Namibia Competition Commission ("NaCC"). Website: http://executive.nacc.com.na/ | | |
| STATUS OF THE COMPETITION AUTHORITY | | | |
| Accountability | | | |
| Does the Competition Authority have obligations before the executive? | Yes | √ | Obligations to report to the executive on on-going investigations upon request. |
| | | √ | The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch. |
| | | √ | The Competition Authority has to report on an annual basis to the executive. |
| Does the Competition Authority have obligations before the legislature? | Yes | √ | Obligation to publish an annual report on its activities. |
| | | X | Obligation to stand before parliament and to respond to congressmen on an annual basis. |
| | | X | Its activities are monitored by an independent auditor or by oversight committees. |
| Does the Competition Authority have obligations before the judiciary? | Yes | √ | Decisions of the Competition Authority are subject to judicial review. |
| Independence | | | |
| Are the criteria for appointment and removal of the head/board members clear and transparent? | Yes | | |
| Does the executive have powers to decide on specific cases based on public interest? | Yes | | |
| Does the executive retain decision-making powers over the Competition Authority? | Yes | | |
| Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency? | Yes | | |
| Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning? | Yes | | Current fiscal year budget for 2012: Approximately US\$ 3.8 million. |
| Can the Competition Authority be financed by its own means (notification fees, fines, etc.)? | Yes | | |
| GOVERNANCE OF THE COMPETITION AUTHORITY | | | |
| Is the Competition Authority governed by a single chairman or by a collegiate body? | Chairman | | |
| Does a minister appoint the heads? | Yes | | |
| Do representatives of more than one government branch appoint the heads? | Yes | | |
| Is there a fixed period during which removal is prohibited? | No | | |
| Is the tenure of the heads renewable? | Yes | | <i>See</i> Competition Act, section 7. |
| Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)? | Yes | | <i>See</i> Competition Act, section 5(2). |
| ARCHITECTURE | | | |
| Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister? | Stand-alone agency | | 269 Independence Avenue (14 BPI House Building) Windhoek. |
| POLICY-MAKING AGENTS -DIVERSIFICATION- | | | |
| How many agencies are responsible for competition enforcement? | One agency. | | |
| Do sector regulators have competition policy enforcement mandate? | Yes | | |
| | Communications Regulatory Authority of Namibia ("CRAN") | | Horizontal agreements, vertical restraints, abuse of dominance, and merger control. <i>See</i> the Communications Act, section 48(1)(a) and the Communications Act, section 33 for a broad prohibition on anticompetitive practices. |

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| | Central Reserve Bank of Namibia (“BoN”) | Merger control. | |
| Have the Competition Authority and other agencies signed protocols or memoranda of understanding? | Telecommunications Regulator | Yes | |
| | Energy Regulator | No. The NaCC is in the process of negotiating a memorandum of understanding with the national electricity regulator, the Electricity Control Board. | |
| | Transport Regulator | No | |
| | Other | BoN. | |
| POLICY DUTIES | | | |
| Does the Competition Authority have exclusive mandate or multiple mandates on competition related matters? | Exclusive competition mandate | X | Concurrent consumer protection mandate. |
| | | X | Concurrent IP mandate. |
| | | Other mandates: Providing the NaCC to enter into memoranda of agreement or memoranda of understanding with other sector regulators. Because the Competition Act was written relatively recently, older regulator regimes did not foresee this Act and thus jurisdiction overlaps. For example, the BoN, CRAN, and Namibia Financial Institutions Supervisory Authority (“NAMFISA”) share regulatory authority. <i>See</i> Competition Act, section 67. | |
| PORTFOLIO INSTRUMENTS | | | |
| Law Enforcement | | | |
| Does the Competition Authority have powers to investigate cartels? | Yes | <i>See</i> Competition Act, section 23(1). | |
| Does the Competition Authority have powers to conduct dawn raids at premises? | Yes | <i>See</i> Competition Act, section 34(1). | |
| Can the Competition Authority investigate <i>ex officio</i> cases? | Yes | <i>See</i> Competition Act, section 25. | |
| Does the Competition Authority have powers to accept leniency applications? | No | | |
| Does the Competition Authority have powers to seek criminal punishment? | No | | |
| Advocacy | | | |
| Can the Competition Authority issue opinions on draft legislation? | No | | |
| Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition? | No | | |
| Rulemaking | | | |
| Can the Competition Authority issue guidelines or other type of secondary legislation? | Yes | X | Guidelines on the calculation of fines. |
| | | X | Guidelines on merger control. |
| | | X | Guidelines on the economic analysis of abuse of dominance cases. |
| Research & Reporting | | | |
| Can the Competition Authority carry out market studies? | Yes | <i>See</i> Competition Act, section 16(1)(c) <i>and also</i> section 16(1)(g). | |
| Can the Competition Authority report to the legislature on the results of market studies? | No | The Commission reports the results of studies to the minister. | |
| DECISION-MAKING FUNCTIONS | | | |
| Aggregated Functions | | | |
| Does the Competition Authority make the decision to investigate and to prosecute cases? | Yes | <i>See</i> Competition Act, section 36(2)(b). | |
| Does the Competition Authority make guilty findings? | Yes | | |
| Does the Competition Authority impose punishments? | Yes | <i>See</i> Competition Act, section 36(2)(b). | |
| Is there a single body that carries out the investigation and the guilty findings within the Competition Authority? | Yes | <i>See</i> Competition Act, sections 36 and 37. | |
| Can the Competition Authority’s decisions be appealed to a court? | Yes | <i>See</i> Competition Act, section 52. | |
| Disaggregated Functions—Prosecutorial Model | | | |
| Are there different authorities that make the decision to investigate and to prosecute cases? | No | | |
| Are disputes presented for decision to a separate entity/tribunal? | No | | |