



MEMORANDUM OF UNDERSTANDING

AMONGST

COMPETITION AUTHORITIES OF THE MEMBER STATES OF THE

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

ON COOPERATION IN THE FIELD OF

COMPETITION POLICY, LAW AND ENFORCEMENT

PREAMBLE

WE, the Competition Authorities of the State and Governments of:

THE REPUBLIC OF ANGOLA

THE REPUBLIC OF BOTSWANA

THE DEMOCRATIC REPUBLIC OF CONGO

THE KINGDOM OF LESOTHO

THE REPUBLIC OF MADAGASCAR

THE REPUBLIC OF MALAWI

THE REPUBLIC OF MAURITIUS

THE REPUBLIC OF MOZAMBIQUE

THE REPUBLIC OF NAMIBIA

THE REPUBLIC OF SEYCHELLES

THE REPUBLIC OF SOUTH AFRICA

THE KINGDOM OF SWAZILAND

THE UNITED REPUBLIC OF TANZANIA

THE REPUBLIC OF ZAMBIA

THE REPUBLIC OF ZIMBABWE

DESIRING to enhance the effective enforcement of our competition laws by creating a framework that provides for cooperation between our respective competition authorities;

HAVING regard to the Southern African Development Community ("SADC") Declaration on Regional Cooperation in Competition and Consumer Policies of 2009 and;

DESIRING to ensure conditions for the effective functioning of markets for goods and services for the economic welfare of the citizens of our respective nations;

RECOGNISING the role of competition in the effective development of the economy and the role of sound and effective enforcement of competition law and policy in the efficient and effective functioning of markets;

FURTHER RECOGNISING that cooperation amongst the competition authorities of our respective nations will improve and strengthen the effective enforcement of our competition laws; and

BASED on the principles of equality, mutual trust and benefit;

HEREBY AGREE as follows:

Article 1 Definitions

- 1.1 The headings of the clauses in this Memorandum of Understanding are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Memorandum of Understanding nor any provision thereof.
- 1.2 In this Memorandum of Understanding, unless the context indicates otherwise:
 - 1.1.1 **'Competition Authorities'** means the body vested with the power of regulating competition in each of the SADC Member States;
 - 1.1.2 **'Competition law'** means the laws of each of the SADC Member States as set out in Schedule 1 hereto;
 - 1.1.3 **'MOU'** means this Memorandum of Understanding signed between the heads of the competition authorities of the SADC Member States;

- 1.1.4 **'Party/Parties'** means each or all of the signatories hereto, as the case may be, all being competition authorities of the SADC member states ;
- 1.1.5 **'Member states'** means the Members of SADC, or where the context indicates, any one of them.

Article 2 Cooperation

Subject to available resources and to the domestic laws in force in their respective countries, the Parties will cooperate by, *inter alia*:

- 2.1 exchanging information and views on significant developments in the competition policies, laws, rules and enforcement thereof in their respective countries;
- 2.2 organising and participating in conferences, workshops and seminars and other capacity building initiatives on competition law and policy and enforcement thereof;
- 2.3 participating in joint studies and research on issues of common interest, including the **assessment** of the impact of their interventions in markets;
- 2.4 cooperating and coordinating with one another in the investigation of mergers and complaints and the prosecution of matters of common interest;
- 2.5 exchanging information on investigations of mergers and complaints and prosecution of cases to the fullest extent possible in terms of their domestic laws; and
- 2.6 to the extent possible, harmonising the rules and procedures for filing of mergers and applying for leniency or immunity.

Article 3
Work plan

- 3.1 The Parties shall develop an annual work plan of activities, crafted within the framework of this MOU, which may be revised by mutual consent.
- 3.2 Each Party shall bear the cost of its participation in any activity set out in the work plan and may elect to participate or not participate in any of the activities set out in the work plan subject to its available resources, priorities and any other relevant consideration.

Article 4
Joint Working Committee

- 4.1 The Parties shall establish a Joint Working Committee constituted by one representative from the Competition Authority of each Member State.
- 4.2 The Joint Working Committee shall function on an ongoing basis and its functions shall include and are not limited to the following:
 - 4.2.1 to manage and facilitate cooperation and consultation in respect of the matters covered under this MOU;
 - 4.2.2 to propose an annual work plan to be adopted by the Parties;
 - 4.2.3 to propose, when necessary, the formation of working groups to undertake joint research or studies on matters of common interest or to deal with any matters covered under this MOU; and
 - 4.2.4 to propose, when necessary, any amendment of or supplementation to this MOU.

Article 5
Confidentiality

- 5.1 No Party shall be required to communicate information to any of the other Parties if such communication is prohibited by the domestic laws or regulations of the Party possessing the information, or if it would be incompatible with the interests of that Party in the application of its laws.
- 5.2 Subject to clause 5.1 above, a Party shall utilise its best endeavours to obtain a waiver of confidentiality from a claimant to enable it to cooperate meaningfully with any of the other Parties in the manner envisaged in this MOU.
- 5.3 If confidential information is communicated to a Party, that Party shall maintain the confidentiality of such information.

Article 6
Settlement of disputes

The Parties shall endeavour to settle any dispute arising from the interpretation or application of this MOU amicably through consultation or negotiation amongst themselves.

Article 7
Communication

All communication pursuant to this MOU shall be in writing.

Article 8

Entry into force, duration and termination

- 8.1 This MOU shall enter into force on the date on which it is signed by two thirds of the persons authorised to sign on behalf of the Parties.
- 8.2 This MOU shall remain in force for a period of three years from the date of its entry into force with the option to renew or extend it further, by agreement between the Parties.
- 8.3 This MOU may be revised or amended in writing by agreement between the Parties at any stage.
- 8.4 A Party may terminate its participation in this MOU at any time by giving at least three (3) months prior written notice to each of the other Parties.
- 8.5 The termination of this MOU shall not affect any activities, programs and projects undertaken by the Parties prior to the termination thereof, or the full execution of any cooperative activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the Parties.

Dated at GABORONE BOTSWANA this 26TH day of MAY 2016

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FOR THE COMPETITION AUTHORITY OF THE REPUBLIC OF ANGOLA

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FOR THE COMPETITION AUTHORITY OF THE REPUBLIC OF BOTSWANA

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FOR THE COMPETITION AUTHORITY OF THE DEMOCRATIC REPUBLIC OF CONGO

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FOR THE COMPETITION AUTHORITY OF THE KINGDOM OF LESOTHO

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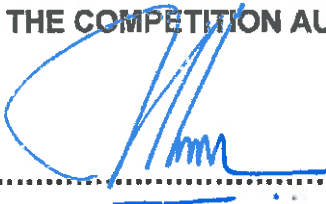
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