



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

NAMIBIAN COMPETITION COMMISSION

No. 1

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: ISUZU MOTORS SOUTH AFRICA (PTY) LTD // THE LIGHT COMMERCIAL
VEHICLE BUSINESS OF GENERAL MOTORS SOUTH AFRICA (PTY) LTD
CASE NO.: 2017SEP0059MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 13 September 2017.
2. Please note that the Commission has **approved the proposed merger without conditions.**
3. The Commission's decision is based on grounds that the proposed transaction is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 2

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: PARATUS TELECOM (PTY) LTD // ITN PROPERTY TWO (PTY) LTD AND
EASCO (PTY) LTD
CASE NO.: 2017OCT0065MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 27 October, 2017.
2. Please note that the Commission has **approved the proposed merger without conditions.**

3. The Commission's decision is based on grounds that the proposed transaction is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 3

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: THE PREPAID COMPANY (PROPRIETARY) LIMITED //
3G MOBILE (PROPRIETARY) LIMITED
CASE NO.: 2017OCT0064MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission received notification of the abovementioned proposed merger on **17 October 2017**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 4

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: LIXIL CORPORATION // GROHE DAWN WATERTECH HOLDINGS
((PROPRIETARY) LIMITED
CASE NO.: 2017OCT0063MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 3 October, 2017.
2. Please note that the Commission has **approved the proposed merger without conditions.**
3. The Commission's decision is based on grounds that the proposed transaction is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 5

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: SUMMIT SALES (PTY) LTD // OLIVER HORSTHEMKE // VINCENT MOLZAHN
CASE NO.: 2017SEP0062MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 28 September, 2017.
2. Please note that the Commission has **approved the proposed merger without conditions.**
3. The Commission's decision is based on grounds that the proposed transaction is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -

- (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
- (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 6

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: WEST PORT PROPERTY INVESTMENTS (PTY) LTD
// NGUNI PROPERTY FUND LTD
CASE NO.: 2017SEP0060MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 15 September, 2017.
2. Please note that the Commission has **approved the proposed merger without conditions.**
3. The Commission's decision is based on grounds that the proposed transaction is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

T. KAULIHOWA
CHAIRPERSON: BOARD TECHNICAL COMMITTEE
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 7

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: NAMIBIA POST AND TELECOM HOLDINGS LIMITED
//SAMBA DUTCHCO B.V
CASE NO.: 2017JUL0043MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission received notification of the abovementioned proposed merger on **3 July 2017**.
2. Please note that the Commission has **prohibited the proposed merger**.
3. The Commission's decision is based on grounds that the proposed transaction is likely to substantially prevent or lessen competition in the Namibian mobile telephony market, as envisaged by section 47(2) of the Competition Act, 2003.
4. The reason for the prohibition of the proposed merger are as follows:
 - 4.1 The investigation identified that the merger is likely to result in TN Mobile and MTC having less of an incentive to compete because of their common ownership. NPTH, which will control both MTC and Telecom Namibia post-merger, is unlikely to suffer financial losses when competition between competitors is eliminated.
 - 4.2 The Commission in its investigation identified the relevant market as the market for the provision of mobile telephony services in Namibia. The proposed merger will result in NPTH strengthening its dominant position in the relevant market through the acquisition of the 34% shareholding currently held by the target undertaking from 66% to 100% shareholding in MTC.
 - 4.3 The proposed merger is likely to adversely affect the telecommunications sector. The investigation revealed that MTC is the dominant mobile telecommunications provider, while Telecom Namibia is the dominant fixed line telecommunications provider. Post-merger NPTH would wholly control both these undertakings and consequently control most of the Namibian telecommunication network. This will likely raise the barriers to entry in the market as the proposed merger is likely to deter entry even in the context of infrastructure sharing regulations as published by the sector regulator.
 - 4.4 The parties to the proposed merger did not put forth any benefit to the public that would outweigh any of the envisaged detriment that is likely to result from the implementation of the proposed merger.
5. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 8

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: NIMBUS INFRASTRUCTURE LIMITED // PARATUS
TELECOMMUNICATIONS (PROPRIETARY) LIMITED
CASE NO.: 2017NOV0072MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission received notification of the abovementioned proposed merger on **16 November 2017**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 9

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: ATTERBURY PROPERTY FUND (PROPRIETARY) LIMITED ("APF") // GROVE
MALL OF NAMIBIA (PROPRIETARY) LIMITED ("GROVE MALL PTY")
CASE NO.: 2017NOV0066MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 10 November, 2017.
2. Please note that the Commission has **approved the proposed merger without conditions**.

3. The Commission's decision is based on grounds that the proposed transaction is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 10

2018

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: COMMERCIAL INVESTMENT CORPORATION (PTY) LTD ("CIC")
// CB ENTERPRISES (PTY) LTD ("CB ENTERPRISES")
CASE NO.: 2017SEP0058MER**

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 13th of September, 2017.
2. Please note that the Commission has **approved the proposed merger with the following conditions:**
 1. *There shall be no retrenchment of employees of the merged undertaking as a result of the merger for a period of 2 years from the date of the approval of the merger.*
 2. *For the sake of clarity retrenchments do not include:*
 - 2.1 *voluntary separation, resignation and voluntary early retirement ("voluntary separations"); and*
 - 2.2 *retrenchments which are merger specific, but agreed to with the Commission in writing after the date of approval of the merger ("merger specific retrenchments").*
 3. *The employees of CB Enterprises will continue to be employed on terms and conditions of employment that are on the whole not less favorable to them than the terms and conditions of employment that prevailed prior to the implementation of the proposed transaction.*

*COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS****Merger Specific Retrenchments***

4. *In the event that the merged undertakings identify any potential merger specific retrenchments, it will request the Commission's agreement to these merger specific retrenchments by way of written correspondence at least one month before these retrenchments are due to be effected. The merged undertakings' written correspondence must include, but shall not necessarily be limited to:*
 - 4.1. *a list of employees likely to be affected by the merger specific retrenchments;*
 - 4.2. *the number and categories of employees likely to be affected by the merger specific retrenchments, as well as their job titles;*
 - 4.3. *the reasons for the retrenchments;*
 - 4.4. *a description of the steps taken by the merged undertakings to avoid the merger specific retrenchments; and*
 - 4.5. *the intended date of the merger specific retrenchments.*
5. *The Commission must within 20 business days of receipt of the correspondence referred to in paragraph 4 above indicate to the merged undertaking whether:*
 - 5.1. *it agrees to these merger specific retrenchments;*
 - 5.2. *does not agree to the merger specific retrenchments; or*
 - 5.3. *it requires further information from the merged undertaking prior to giving its consent.*
6. *In the event that the Commission requires further information it will, within 20 business days of receiving the aforementioned additional information, indicate in writing to the merged undertaking whether it agrees to or does not agree to these retrenchments.*
7. *The Commission will not unreasonably withhold its consent to the merger specific retrenchments. In the event that the Commission withholds its consent to the merger specific retrenchments it will provide the merged undertakings with its reasons for withholding its consent in writing.*

Non-merger specific retrenchments

8. *For the sake of transparency, in the event that the merged undertaking identifies any non-merger specific retrenchments, it will inform the Commission of these potential retrenchments at least one month before these retrenchments are due to be effected. The merged undertakings correspondence must include, but is not limited to:*
 - 8.1. *a list of employees likely to be affected by non-merger specific retrenchments;*
 - 8.2. *the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;*
 - 8.3. *an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);*

- 8.4. *a description of the steps taken by the merged undertakings to avoid the non-merger specific retrenchments; and*
- 8.5. *the intended date of the non-merger specific retrenchments.*

Reporting obligations

9. *In order for the Commission to monitor compliance with the conditions, the merged undertaking must, for the duration of the subsistence of the condition as set out in paragraph 1 above, in addition to the correspondence referred to in paragraphs 4 and 8 above, provide the Commission with reports:*
 - 9.1. *On the Implementation Date informing the Commission of the implementation of the transaction;*
 - 9.2. *Within two months of the Implementation Date ; and*
 - 9.3. *Thereafter on a bi-annual basis on 31st April and 30th November and ending 30th November 2019;*
10. *The merger compliance reports must include but shall not necessarily be limited to the following information:*
 - 10.1 *Regarding employment;*
 - 10.1.1 *a list of all the employees as at the date of the report which includes their full names, positions, job grades and remuneration;*
 - 10.1.2 *copies of the existing (pre-proposed transaction) employment contracts indicating the terms and conditions of employment. Where employment contracts are concluded verbally these must be reduced to writing and where the terms and conditions of employment are not contained in the employment contracts, the merged undertaking must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the first report);*
 - 10.1.3 *a list of the employees recruited, promoted and retrenched from the time that the merger was approved or since the period covered by the most recent merger compliance report submitted to the Commission;*
 - 10.1.4 *the reasons for the retrenchments;*
 - 10.1.5 *a list of employees dismissed (if any) as a result of disciplinary conduct as provided for under the relevant and applicable policies of the merged undertaking;*
 - 10.1.6 *The contact details of the dismissed employees as indicated in paragraph 10.1.5 above;*
 - 10.1.7 *a copy of the Affirmative Action Report for the merged undertakings as submitted to the Office of the Employment Equity Commissioner; and*

10.1.8 *any additional information that may reasonably be required by the Commission to monitor compliance with the condition.*

Definitions

11. *The term “merged undertaking” means collectively CIC and CB Enterprises and any subsidiary of the said entities, subsequent to the merger;*
 12. *The term “acquiring group” means the total of all the undertakings as defined in rule 27(1)(a)(b)(c);*
 13. *“Commission” means the Namibian Competition Commission, a statutory body established in terms of the Competition Act, 2003 (Act No. 2 of 2003.);*
 14. *“retrenchments” constitute dismissals arising from collective termination or redundancy*
 15. *“terms and conditions” in relation to employment contracts means any term and/or condition agreed upon between employer and employee relating to, among others, employee duties and responsibilities, work days, working hours, leave days, sick leave, remuneration, benefits such as pension and medical aid schemes or contributions thereto;*
 16. *“Implementation Date” means the date on which the Merger is implemented by the parties;*
 17. *References to “date of approval” means the date on which the merger is approved by the Commission;*
 18. *“CB Enterprises” means CB Enterprises (Proprietary) Limited (registration number 2003/318), a private company duly incorporated in accordance with the laws of Namibia whose registered office is at 7 Calcium Street, Prosperita, Windhoek, Namibia;*
 19. *“CIC” means CIC Investment Corporation (Proprietary) Limited (registration number 63/1848), a public company duly incorporated in accordance with the laws of the RSA.*
3. The Commission’s decision is based on grounds that although the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) (a) of the Competition Act, 2003, it raises public interest concerns, relating to employment. Given the synergies that are likely to arise from the merger and the possible duplication of roles between CIC and CB Enterprises employees, the Commission in order to safeguard employment recommends that the merger be approved subject to conditions.
 4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 11

2018

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: VERDWAAL FARMING (PTY) LTD // E AND L LAFRENZE TRUST
CASE NO.: 2017SEP0056MER**

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission received notification of the abovementioned proposed merger on **8 November 2017**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 12

2018

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: SEAWORK FISH PROCESSORS (PTY) LTD // SUPA MARINE PAINT (PTY LTD
CASE NO.: 2017SEP0057MER**

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission received notification of the abovementioned proposed merger on **19 October 2017**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -

- (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
- (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 13

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: AECI LIMITED // MUCH ASPHALT (PROPRIETARY) LIMITED
CASE NO.: 2017OCT0069MER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 47(7), Rule 30)

1. The Commission has received notification of the abovementioned proposed merger on 10 November, 2017.
2. Please note that the Commission has **approved the proposed merger without conditions.**
3. The Commission's decision is based on grounds that the proposed transaction is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if -
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**
