



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 5 June 2018

No. 6618

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 207

2018

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
PROPOSED MERGER: PRIF NAMIBIA HOLDINGS (PTY) LTD // SEDGELEY
SOLAR MANAGEMENT (PTY) LTD
CASE NO.: 2018MAR007MER

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 March, 2018**.
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.*

G. SHILONGO
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 208

2018

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
PROPOSED MERGER: PETREDEC LOGISTICS PTE. LTD // CAMEL FUELS PROPRIETARY
LIMITED
CASE NO.: 2018MAR009MER

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 **29 March, 2018**.
2. Please note that the Commission has **approved the proposed merger without conditions**.

3. The Commission's decision is based on the 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.*

**G. SHILONGO
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 209

2018

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
PROPOSED MERGER: NAMIBIA INFRASTRUCTURE FUND LIMITED // SUNEQ FOUR
INVESTMENTS (NAMIBIA) (PTY) LTD
CASE NO.: 2018FEB005MER**

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

1. The Commission received notification of the abovementioned proposed merger on **23 February 2018**.
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.*

**G. SHILONGO
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 210

2018

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
PROPOSED MERGER: ATTNAM INVESTMENTS PROPRIETARY LIMITED A SUBSIDIARY
OF ATTERBURY PROPERTY FUND PROPRIETARY LIMITED (“APF”) // GROVE
MALL OF NAMIBIA PROPRIETARY LIMITED (“GROVE MALL PTY”)
CASE NO.: 2018APR0012MER

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 April 2018.
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.*

G. SHILONGO
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 211

2018

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
PROPOSED MERGER: PHILCO ONE HUNDRED AND SIXTY SEVEN (PTY) LTD //
NAMIBIA PLASTIC CONVERTERS (PTY) LTD
CASE NO.: 2018JAN0002MER

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

1. The Commission received notification of the abovementioned proposed merger on **29 January 2018.**
2. Please note that the Commission has **approved the proposed merger with conditions.**
3. The Commission’s decision is based on the grounds that although the proposed transaction is unlikely to result in the prevention or substantial lessening of competition or in any

undertaking acquiring or strengthening a dominant position, it however, gives raise to public interest concerns, in particular employment, as envisaged by section 47(2) of the Competition Act, 2003. Given the above and in order to safeguard employment of the 40 employees in the employment of the target undertaking, the Commission found it necessary to approve the acquisition of a business conducted by Namibia Plastic Converters (Pty) Ltd by Philco One Hundred and Sixty Seven (Pty) Ltd subject to the following conditions:

1. *There shall be no retrenchment of employees of the merged undertakings as a result of the merger for a period of 2 years.*
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 on with the Commission in writing after the approval of the merger (“merger specific retrenchments”).*
3. *All employees transferred from the manufacturing business of Namibia Plastic Converters (Pty) Ltd be employed by Philco 167 (Pty) Ltd on terms and conditions of employment that are on the whole not less favorable to them than their existing terms and conditions of employment.*

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS

Merger Specific Retrenchments

4. *In the event that Philco 167 (Pty) Ltd identifies 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 affected. Philco 167 (Pty) Ltd’s written correspondence in terms of this condition must include, but is not 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 Philco 167 (Pty) Ltd 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 Philco 167 (Pty) Ltd 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 Philco 167 (Pty) Ltd 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 Philco 167 (Pty) Ltd 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 Philco 167 (Pty) Ltd with its reasons for withholding its consent in writing.*

Non- merger specific retrenchments

8. *Although the provision in clause 1 does not prohibit the merging parties from retrenching employees for non-merger specific reasons, for the sake of transparency, in the event that Philco 167 (Pty) Ltd 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. Philco 167 (Pty) Ltd's 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 Philco 167 (Pty) Ltd 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 undertakings must, in addition to the correspondence referred to in paragraphs 8 and 12 above, provide the Commission with reports on the following dates:*
 - 9.1. *2 July 2018, for the status as at the date of the implementation of the transaction (initial report);*
 - 9.2. *Thereafter on a biannual basis, with the first report due 31 November 2018, with the subsequent reports being due on 31st April and 31 November until the end of the two-year period from the date of the Commission's determination of the merger.*
10. *The merger compliance reports must include but is not limited to the following information:*
 - 10.1. *Regarding employment;*
 - 10.1.1. *In respect of the first report and all subsequent biannual reports, 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. *in respect of the first report:*

10.1.2.1. *copies of the existing (pre-proposed transaction) employment contracts for each different job grade and different position 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.) employment contracts for each different (this condition is only relevant for the first report);*

10.1.2.2. *copies of the new employment contracts, under which persons are employed with the merged undertaking, for each different job grade and different position 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);*

10.1.3. *a list of the employees 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; and*

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

Definitions

11. *The term “merged undertakings” means Philco 167 (Pty) Ltd and the manufacturing business.*
 12. *The manufacturing business means the manufacturing of polyvinyl chloride and high-density polyethylene pipes as well as other types of plastic and PVC based products and the selling thereof.*
 13. *The term acquiring group means the total of all the undertakings as defined in rule 27(1)(a)(b)(c).*
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.*

**G. SHILONGO
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 212

2018

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION
TO PROPOSED MERGER: NIMBUS INFRASTRUCTURE LIMITED // PARATUS
TELECOMMUNICATIONS (PROPRIETARY) LIMITED
CASE NO.: 2018MAR0008MER

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

1. The Commission received notification of the abovementioned proposed merger on **15 March 2018**.
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.*

**G. SHILONGO
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 213

2018

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION
TO PROPOSED MERGER: OMWINDI FARMING (PTY) LTD //
OLIVE EXCLUSIVE HOTEL (PTY) LTD
CASE NO.: 2017DEC0081MER

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 December, 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.*

G. SHILONGO
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