



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 44

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: INIHC LIMITED//CHINA AFRICA RESOURCES NAMIBIA LIMITED
CASE NO.: 2019NOV0041MER

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 **1 November 2019**.
2. Please note that the Commission has **approved the proposed merger subject to the following condition:**
 - 2.1. *That post-merger there will be no adverse changes to the water supply during Ibaera's ownership of the Berg Aukas Project and that Namwater will continue to source water from the Berg Aukas mine uninterrupted.*

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS
Reporting obligations

3. *In order for the Commission to monitor compliance with the conditions, as set out in paragraph 1 above, the merged undertaking shall provide the Commission with reports on the following dates:*
 - 3.1. *On the implementation date, informing the Commission of the implementation of the transaction;*
 - 3.2. *within two months of the implementation date, for the status as at the date of the implementation of the transaction (initial report);*
 - 3.3. *Thereafter on a bi-annual basis, starting 30th of June 2020.*
4. *The merger compliance reports must include but is not limited to the following information:*
 - 4.1. *A letter from Namwater indicating that there have been no changes to the water supplied from the Berg Aukas mine since the implementation of the transaction.*

Definitions

“**Acquiring group**” means the total of all the undertakings as defined in rule 27 (1) (a) (b) and (c) as amended;

“**Commission**” means the Namibian Competition Commission;

“**Competition Act**” means Competition Act 2 of 2003;

“**Merged undertaking**” means collectively the acquiring group, Ibaera Capital Fund GP, and any subsidiary of the said entities, subsequent to the merger;

**P. CARLSON
CHAIRPERSON
NAMIBIA COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 45

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: LAULA CONSORTIUM PROPRIETARY LIMITED // AVENG NAMIBIA
PROPRIETARY LIMITED
CASE NO.: 2019NOV0043MER

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 **7 November 2019**.
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.*

**P. CARLSON
CHAIRPERSON
NAMIBIA COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 46

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: CASH MANAGEMENT SOLUTIONS PROPRIETARY LIMITED // MAIN STREET
1723 PROPRIETARY LIMITED
CASE NO.: 2019NOV0047MER

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 **14 November 2019**.

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.*

P. CARLSON
CHAIRPERSON
NAMIBIA COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 47

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: RCS INVESTMENT HOLDINGS NAMIBIA (PTY) LTD // ABSA BOOK DEBT
CASE NO.: 2019NOV0040MER

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 November 2019.**
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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 48

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: COMMERCIAL INVESTMENT CORPORATION (PTY) LTD
// GEKA PHARMA (PTY) LTD
CASE NO.: 2019JUN0021MER

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

1. The Commission received notification of the proposed merger on **20 June 2019**.
2. Please note that the Commission **approved the proposed merger with conditions**.
3. The Commission's decision is based on 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 in the identified relevant markets. However, given the vertical integration that will arise as a result of the proposed transaction, it is likely for the merged entity to exercise some sort of market power in relation to products for which they are appointed or act as master distributors on behalf of manufactures/agents/principals' post-merger, hence the proposed conditions:
 1. *In the event that any entity of the acquiring group is a master distributor and appoints any entity within the group as a distributor it may not withhold supplies in relations to scheduled medicines to its competitors in Namibia.*
 2. *In the event that the acquiring group and any of its affiliate(s) is a master distributor who appoints any entity within the group as a distributor, those entities of the acquiring group must maintain the single exit price ("SEP") at which the acquiring group buys scheduled medicine related to the master distributor agreement for further distribution in Namibia.*
 3. *In the event that any entity of the acquiring group is a master distributor who appoints any entity within the group as a distributor, those entities of the acquiring group must maintain the SEP or any other price recommended/set by principals/agents/manufactures when selling scheduled medicines related to the master distributor agreement as identified by NMRC or any other competent body responsible for defining scheduled medicines in Namibia from time to time.*
 - 3.1. *In terms of the selling of such scheduled medicine as indicated in condition 2 above, the acquiring group or any of its affiliates are allowed to deviate from the SEP and offer discounts to pharmaceutical outlets as agreed upon with manufacturers/principals from whom they buy or on behalf of whom they sell such medicine, or offer discounts in relation to scheduled medicine that the acquiring group sells that are nearing their expiration date.*
 4. *If any pharmaceutical wholesalers/competitor to the acquiring group at the pharmaceutical wholesale level in Namibia places an order for scheduled medicine related to the master distributor agreement with a master distributor or any entity within the group appointed as a distributor and is informed that there is no stock of such ordered medicine, but any entity within the acquiring group has stock of the medicine so ordered, then those members of the acquiring group must supply the medicine to that pharmaceutical wholesaler/ competitor at the delivered price.*

*COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS****Reporting obligations***

1. *In order for the Commission to monitor compliance with the conditions as set out in paragraph 1,2, 3 and 4 above, any entity within the acquiring group who is a master distributor or who owns and distributes scheduled medicine in/ into Namibian shall provide the Commission with reports on the following dates:*
 - 1.1. *On the implementation date, informing the Commission of the implementation of the transaction;*
 - 1.2. *within two months of the implementation date, for the status as at the date of the implementation of the transaction (initial report);*
 - 1.3. *Thereafter on a bi-annual basis, starting 31st of July 2020;*
 - 1.4. *After five years of the implementation of the transaction, the merged undertaking may at any time apply to the Commission to remove any reporting obligation created in terms of the conditions imposed;*
 - 1.5. *The application made, must contain all the relevant information in the merged entity's possession to assist the Commission in making a decision in relation to the reporting obligations.*
 - 1.6. *After considering the application the Commission must determine and inform the parties, providing reasons therefor, whether or not the reporting obligation will be removed or if the Commission will continue to require the parties to report in terms of the conditions for a further specified period.*
2. *The merger compliance reports indicated in 1 above must include but are not limited to the following information:*
 - 2.1. *regarding conditions 1,2 ,3 & 4:*
 - 2.1.1 *a list of all entities within the acquiring group, who own scheduled medicine and from whom Geka or any other entities within the acquiring group bought scheduled medicine for distribution within the Namibian market as at the date of the report, which includes:*
 - 2.1.1.1 *the full names of such entities and their location;*
 - 2.1.1.2 *description of the goods, services, or products supplied to the merged undertaking by such entities indicating product schedule as per Namibia's NMRC schedules;*
 - 2.1.1.3 *the monetary value (including any discounts, rebates etc.) of the goods, services or products provided by such principals represented.*
 - 2.1.1.4 *Provide copies of agreements between such entities and such principals for all principals represented by the merged undertaking at the date of implementation and any amendments or new agreements thereafter.*
 - 2.1.1.5 *a list of all products sold by the merged undertaking to its competitors in terms of condition 1,2, 3 and 4.*

2.1.1.6 *A list of orders received by the acquiring for the Namibian markets. The list must include: the product specifications, date of order; date of order dispatched; value of the order; if not dispatched, reason(s) for not dispatching.*

Definitions

“**Acquiring group**” means the total of all the undertakings as defined in rule 27 (1) (a) (b) and (c) as amended; with the inclusion of Geka Pharma Pty Ltd and any subsidiary of the said entities, subsequent to the merger;

“**Commercial Investment Corporation Pty Ltd**” (“**CIC**”), a private company incorporated accordance with the laws of the Republic of Namibia with registration number 63/1848.

“**Commission**” means the Namibian Competition Commission;

“**Competition Act**” means Competition Act 2 of 2003;

“**Delivered Price**” means SEP less logistics fee plus inbound cost (inbound costs which includes clearing, forwarding, customs, transport duties and applicable Foreign Exchange Rate);

“**Geka Pharma (Pty) Ltd**” (“**Geka**”) means a private company incorporated in terms of the laws of Namibia, with registration number 2000/288.

“**Master Distributor**” means an entity that enters into a **Master** distributorship agreement (wherein they own stock) and are given permission to appoint sub-distributors for the distribution of a particular product/s for a specific geographical area.

“**Merged undertaking**” means CIC, as the primary acquiring undertaking, and Geka, as the primary target undertaking;

“**NMRC**” means the Namibia Medicines Regulatory Council;

“**Scheduled medicine**” means medicine classified as schedule 1 and above that requires a licence from NMRC for its purchase, sale or distribution in Namibia

4. “**Interpretation**”

“days” shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” will be any day other than a Saturday, Sunday or a recognised public holiday in Namibia; and

“notice”, “this notice”, “herein”, “hereof” and “hereunder” may be used interchangeably and each means the notice of determination of the merger as set out in this document.

Where any number of days is prescribed in this notice, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 49

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: RCS INVESTMENT HOLDINGS NAMIBIA (PTY) LTD // EDCON BOOK DEBT
CASE NO.: 2019NOV0039MER

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 November 2019**.
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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 50

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: OVERO INVESTMENTS CC // EDELWEISS INVESTMENTS EIGHT (PTY) LTD
CASE NO.: 2019AUG0027MER

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

1. The Commission received notification of the abovementioned proposed merger on **6 August 2019**.
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. Be informed that the Commission's approval does not include or imply any other approval, authorization, permission or consent which may be required in terms of any other legislation or law.
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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 51

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: UTILITY ENERGY PARTNERS ASSETS (NAMIBIA) (PTY) LTD ("INVESTCO")
// THE BUSINESS OF BOKSTONE SOLAR (PTY) LTD ("BOKSTONE")
CASE NO.: 2019AUG0029MER

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 **8 August 2019**.
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. Be informed that the Commission's approval does not include or imply any other approval, authorization, permission or consent which may be required in terms of any other legislation or law.
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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 52

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: BIDVEST BANK LIMITED // EQSTRA INVESTMENT HOLDINGS
PROPRIETARY LIMITED
CASE NO.: 2019SEP0031MER

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 **7 September 2019**.
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. Be informed that the Commission's approval does not include or imply any other approval, authorization, permission or consent which may be required in terms of any other legislation or law.
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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 53

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: OHLTHAVER & LIST FINANCE AND TRADING CORPORATION LIMITED //
HARTLIEF CORPORATION LTD
CASE NO.: 2019JUN0020MER

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 **18 June 2019**.
2. Please note that the Commission has **approved the proposed merger subject to the following condition:**

1. *Following implementation, there shall be no retrenchment of the employees of Hartlief Ltd (“Hartlief”) in Namibia below management level as a result of the merger for a period of 2 years from the date of the implementation of the merger.*
2. *For the sake of clarity retrenchments do not include:*
 - 2.1 *voluntary separation, resignation, or voluntary early retirement (“voluntary separations”);*
 - 2.2 *transfer of employees from Hartlief to any subsidiary directly or indirectly controlled by Ohlthaver & List Finance and Trading Corporation Limited (“Olfitra”).*
3. *The employees of Hartlief shall be appointed on terms and conditions of employment that are on the whole not less favorable prior to implementation of the merger.*

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS

Non-merger specific retrenchments

4. *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. Such notification shall include, but is not limited to:*
 - a. *a list of employees likely to be affected by non-merger specific retrenchments;*
 - b. *the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;*
 - c. *an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);*
 - d. *a description of the steps taken by Hartlief to avoid the non-merger specific retrenchments; and*
 - e. *the intended date of the non-merger specific retrenchments.*

Reporting obligations

5. *In order for the Commission to monitor compliance with the conditions, as set out in paragraph 1 and 3 above, provide the Commission with reports on the following dates:*
 - a. *31 January 2020, for the status as at the date of the implementation of the transaction (initial report); and*
 - b. *Thereafter on a bi-annual basis, starting 30th of April 2020, with subsequent compliance until the expiry of the conditions imposed.*
 1. The merger compliance reports must include but is not limited to the following information:
 - a. *Regarding employment;*

- i. *a list of all the employees as at the date of the report which includes their full names, positions and relevant department or division, job grades and remuneration;*
 - ii. *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, Hartlief 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);*
 - iii. *copies of the new employment contracts, under which the employees of Hartlief are employed, 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, Hartlief 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);*
 - iv. *a list of the employees who have left the employment of Hartlief from the time that the merger was approved or since the period covered by the most recent merger compliance report submitted to the Commission;*
 - v. *the reasons for the retrenchments; and*
- b. *Any additional information that may be required by the Commission to monitor compliance with the Condition.*

Definitions

“Commission” means the Namibian Competition Commission;

“Competition Act” means Competition Act 2 of 2003;

“Management” means staff responsible for controlling or administering a group of staff or those that perform key functions without the regular supervision by others (i.e. heads of departments for the factory, production, HR, Quality Control, Technical and the like) and key specialised functions, (i.e. engineers and the like);

“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.

**P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 54

2020

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: CFAO HOLDINGS SOUTH AFRICA (PTY) LTD // UNITRANS MOTOR
HOLDINGS (PTY) LTD
CASE NO.: 2019AUG0028MER**

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 **9 August 2019**.
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.*

**P. CARLSON
CHAIRPERSON
NAMIBIA COMPETITION COMMISSION**
