



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## General Notices

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### NAMIBIAN COMPETITION COMMISSION

No. 407

2016

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: SAMBA LUXCO S.A.R.L // MOBILE TELECOMMUNICATIONS LIMITED  
CASE NO.: 2016JUN0031MER

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

1. The Commission received notification of the abovementioned proposed merger on **27 June 2016**.
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**

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### NAMIBIAN COMPETITION COMMISSION

No. 408

2016

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: GRACE INVESTMENTS ONE HUNDRED THIRTY FOUR (PTY) LTD //  
SAND CITY FIFTY NINE (PTY) LTD // DUNES MALL (PTY) LTD //  
GREENSTONE RESORTS (PTY) LTD  
CASE NO.: 2016JULY0034MER

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 **22 July 2016**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 409

2016

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO  
PROPOSED MERGER: ALLEGROW FUND (PTY) LTD //  
PARATUS TELECOMMUNICATIONS (PTY) LTD  
CASE NO.: 2016AUG0040MER**

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

1. The Commission received notification of the abovementioned proposed merger on **19August 2016**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 410

2016

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: ENX GROUP LIMITED // EQSTRA NEWCO  
CASE NO.: 2016JULY0036MER**

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

1. The Commission received notification of the abovementioned proposed merger on **28 July 2016**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 411

2016

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: ALLEGROW FUND (PTY) LTD // FABUPHARM (PTY) LTD  
CASE NO.: 2016AUG0041MER**

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 August 2016**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 412

2016

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: EMMANUEL DAVID FRETAS DIAS // OTJIWARONGO HARDWARE CC  
CASE NO.: 2016AUG0039MER

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 August 2016**.
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 undertakings as a result of the merger for a period of 1 year. The term “merged undertakings” means Otjiwarongo Hardware CC (trading as Built IT Otjiwarongo) and Mr. Emmanuel David Fretas Dias.*
  2. *For the sake of clarity retrenchments do not include:*
    - 2.1 *voluntary separation 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 Otjiwarongo Hardware CC (trading as Built IT Otjiwarongo) be employed by Mr. Emmanuel David Fretas Dias 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 Emmanuel David Fretas Dias identifies any potential merger specific retrenchments, he 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. Emmanuel David Fretas Dias’s written correspondence 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 Emmanuel David Fretas Dias 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 Emmanuel David Fretas Dias 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 Emmanuel David Fretas Dias 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 Emmanuel David Fretas Dias 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 Emmanuel David Fretas Dias 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 Emmanuel David Fretas Dias identifies any non merger specific retrenchments, he will inform the Commission of these potential retrenchments at least one month before these retrenchments are due to be effected. Emmanuel David Fretas Dias'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 Emmanuel David Fretas Dias 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 4 and 8 above, provide the Commission with reports on the following dates:*
  - 9.1. *1 November 2016, for the status as at the date of the implementation of the transaction;*
  - 9.2. *31 January 2017;*
  - 9.3. *28 April 2017;*
  - 9.4. *28 July 2017; and*
  - 9.5. *31 October 2017.*
10. *The merger compliance reports must include the following information:*
  - 10.1. *a list of all the employees as at the date of the report which includes their full names, positions, job grades and remuneration;*
  - 10.2. *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;*
  - 10.3. *the reasons for the retrenchments; and*
  - 10.4. *any additional information that may be required by the Commission to monitor compliance with the condition.*
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. However, it gives rise to public interest concerns. In particular, it is submitted that post merger, all 23 employees in the employ of the target undertaking will be employed on a 90 day trial period, upon which permanent employment offer will be offered to successful employees. The latter could put some employees at a disadvantage, a position they were not in pre-merger as some are likely not to be re-employed.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 413

2016

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: MAIN STREET 1440 PROPRIETARY LIMITED // SMIT HOLDINGS SA  
PROPRIETARY LIMITED AND MAIN STREET 1444 PROPRIETARY LIMITED  
CASE NO.: 2016AUG0038MER

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 August 2016**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 414

2016

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: THE BIDVEST GROUP LTD // BRANDCORP HOLDINGS (PTY) LTD  
CASE NO.: 2016JULY0032MER

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

1. The Commission received notification of the abovementioned proposed merger on **12 July 2016**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 415

2016

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: KEVIN KEITH DAVIDOW // ERF THREE FIVE ONE FOUR WINDHOEK CC  
CASE NO.: 2016JULY0035MER

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

1. The Commission received notification of the abovementioned proposed merger on **25 July 2016**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 416

2016

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: BUSINESS VENTURE INVESTMENTS NO 1953 (PTY) LTD // UNI-SPAN  
HOLDINGS (PTY) LTD / CONCORD CRANES (PTY) LTD / UVUNDLU INVESTMENTS  
(PTY) LTD / PROWALCO (PTY) LTD  
CASE NO.: 2016JUL0033MER

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

1. The Commission received notification of the abovementioned proposed merger on **20 July 2016**.
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**

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