



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 106

2017

NOTICE OF DECISION OF COMMISSION REGARDING EXEMPTION:
COMPETITION ACT, 2003 (ACT NO. 2 OF 2003) (SECTION 28, RULE 21(5))

PROFESSIONAL PROVIDENT SOCIETY INSURANCE COMPANY LIMITED;
PROFESSIONAL PROVIDENT SOCIETY INSURANCE COMPANY NAMIBIA; SANLAM
LIFE NAMIBIA LIMITED; AND SANLAM NAMIBIA LIMITED

HEREINAFTER JOINTLY REFERRED TO AS “THE APPLICANTS”

CASE NO: 2016SAN0001EXEMP

1. The above named Applicants have applied to the Commission on **1 September 2016** for an exemption in respect of certain restrictive practices, as contemplated in section 27(1) of the Act.

<input checked="" type="checkbox"/> a single agreement	<input type="checkbox"/> a category of agreements
<input type="checkbox"/> a decision	<input type="checkbox"/> a category of decisions
<input type="checkbox"/> a concerted practice	<input type="checkbox"/> a category of concerted practices,

as described in the Applicants' application and Government Gazette No. 6168, General Notice No. 463 of 2016.

2. The Commission gives notice of its decision in terms of Section 28(1)(b) of the Act to refuse the exemption concerned. The Applicants have been duly informed of the basis of the Commission's decision.

S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 107

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: FIR TREE INVESTMENTS (PTY) LTD // PEARTREE INVESTMENTS (PTY) LTD
CASE NO.: 2016OCT0050MER

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 December 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**

NAMIBIAN COMPETITION COMMISSION

No. 108

2017

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: FIREFLY INVESTMENTS 319 PROPRIETARY LIMITED // MURRAY AND
ROBERTS LIMITED
CASE NO.: 2017FEB0002MER**

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 **2 February 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. 109

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: FIRST NATIONAL BANK OF NAMIBIA HOLDINGS (PTY) LTD // VARIOUS
ENTITIES OF THE POINTBREAK GROUP (PTY) LTD
CASE NO.: 2016OCT0054MER

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

1. The Commission received notification of the abovementioned proposed merger on **18 October 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

NAMIBIAN COMPETITION COMMISSION

No. 110

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: STANDARD BANK NAMIBIA HOLDINGS LIMITED//ARLEO INVESTMENT
SIXTEEN (PTY) LTD
CASE NO.: 2016DEC0061MER

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

1. The Commission received notification of the abovementioned proposed merger on **30 January 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. 111

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: PROFESSIONAL PROVIDENT SOCIETY INSURANCE COMPANY (NAMIBIA)
LIMITED // SANLAM LIFE NAMIBIA LIMITED IN RESPECT OF THE PPS LIFE AND
DISABILITY ASSUARANCE SCHEME
CASE NO.: 2016NOV0059MER

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 November 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**

NAMIBIAN COMPETITION COMMISSION

No. 112

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: MOTHER LODE SOLUTIONS (PTY) LTD // HIMMEL PROPERTIES AND
RENTAL SERVICES (PTY) LTD
CASE NO.: 2016DEC0062MER

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 December 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

NAMIBIAN COMPETITION COMMISSION

No. 113

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: NAMIBIA PORTS AUTHORITY // ELGIN BROWN &
HAMER CONSORTIUM (PTY) LTD
CASE NO.: 2016AUG0042MER

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

1. The Commission received notification of the abovementioned proposed merger on **23rd August 2016**.
2. Please note that the Commission has **approved the proposed merger with the following conditions**:
3. *Namport shall continue to operate and maintain the syncrolift and the floating docks.*

4. *Pricing for the use of the syncrolift shall be set at the prevailing tariffs and any annual increase in the tariffs must not exceed the prevailing Namibia Consumer Price Index (“NCPI”);*

Should Namport need to increase tariffs by more than the prevailing NCPI due to cost increases exceeding this level, they must prior to imposing such tariffs seek the Commission’s approval and indicate to the Commission in writing citing any reasons and/or justifications for the increment along with any relevant proof.
5. *From the date of implementation of the transaction the merged undertaking shall avail their smallest floating dock (length 140m; width 23.5m; depth 8.5m; displacement 6 500t) to be operated as a common user dock in the following instances:*
 - 5.1 *In the event that the syncrolift currently operated by Namport is not operational;*
 - 5.2 *In the event that the syncrolift is operational but not at full capacity;*
 - 5.3 *Condition 3 will only apply to vessels that would ordinarily be able to use the syncrolift (maximum length 80m, width 12m, displacement 2 000t).*
6. *As long as the availed floating dock operates as a common user facility the following will apply:*
 - 6.1 *the prices that will be charged at the dock will be the prevailing rates charged by EBH Namibia and any annual increases in rates must not exceed the prevailing NCPI;*
 - 6.2 *EBH Namibia will be precluded from using the availed dock to provide any ship repair services;*
 - 6.3 *The booking procedure at the availed dock should be similar to the procedures currently followed when booking the syncrolift as outlined in the Operating Procedure Syncrolift Operation Process flow dated 11 November 2015. Once a booking procedure is determined it should be shared with the Commission for approval prior to its implementation;*
 - 6.4 *After a period of 5 years Namport must operate all three floating docks as common user facilities operating on a similar basis as the syncrolift;*
 - 6.4.1 *The charges at the common use docks will be set at the prevailing rates and any annual increases in rates must not exceed the prevailing NCPI;*
 - 6.4.2 *Should Namport need to increase tariffs by more than the prevailing NCPI, they must prior to imposing such tariffs seek the Commission’s approval and indicate to the Commission in writing citing any reasons and/or justifications for the increment along with any relevant proof.*
 - 6.5 *From the date of implementation of the proposed transaction Namport must outline a plan of action along with all the relevant proof for the transformation of the three floating docks into common user facilities which plan must be submitted for approval to the Commission within 3 years;*
7. *In order for the Commission to properly monitor compliance with the above conditions the merged undertaking shall:*

- 7.1 *Provide the Commission with a bi-annual compliance report indicating the following –*
- 7.1.1 *Copies of all the financing agreements with the relevant financiers relating to the floating docks;*
 - 7.1.2 *An indication of what maintaining the syncrolift entails (only necessary for the first report);*
 - 7.1.3 *Whether or not the syncrolift is operational;*
 - 7.1.4 *Copies of the prevailing rates at the syncrolift and those of the smallest floating dock;*
 - 7.1.4.1 *If the syncrolift is/was not operational or not operational at full capacity Namport must provide information including but not limited to the following;*
 - 7.1.4.2 *Detailed reasons as to why the syncrolift is fully or partially out of service;*
 - 7.1.4.3 *An indication of how long the syncrolift will be out of full service;*
 - 7.1.4.4 *What measures Namport will or has put in place to bring the syncrolift back in full service;*
 - 7.1.4.5 *An indication of when the syncrolift will be brought to full service;*
 - 7.1.4.6 *an indication of the number of vessels that booked the floating dock indicating;*
 - 7.1.4.6.1 *the name of vessels and their respective owners;*
 - 7.1.4.6.2 *relevant invoices for the docking fees or any other fees relating to the use of the floating dock.*
8. *In addition to the merging parties failing to adhere to any of the above stated conditions the following actions by the merged undertaking will be regarded as a contravention of these conditions:*
- 8.1 *Failure to provide the compliance report on time without providing reasons therefor;*
 - 8.2 *Failure to provide any further information requested by the Commission without providing reasons therefor;*
9. *the following definitions shall apply:*
- “common user”**- *Vessels will only pay for the docking fees and will be free to use any other service provider of their choice for maintenance and repair work if required.*
- “Full capacity”** – *Syncrolift must be able to accommodate vessels with the following specifications: maximum length 80, width 12m, displacement 2 000t.*
- “merged undertaking”** *means Namport, EBH Consortium (Pty) Ltd and EBH Namibia Pty (Ltd).*

“NCPI”- Namibia Consumer Price Index as calculated by the Namibian Statistics Agency.

10. The Commission’s decision is based on grounds that the proposed transaction is likely to substantially prevent or lessen competition in Namibia, as envisaged by Section 47(2) of the Competition Act, 2003.
11. Post merger Namport will 100% own EBHN and the floating docks in addition to the Syncrolift. The proposed transaction will therefore incentivize Namport to act in a way that favors EBHN post-merger. Notably Namport may decide not to maintain the syncrolift, expand the capacity of the syncrolift or repair it thereby foreclosing other players from the markets. Namport also has the ability and incentive to raise tariffs for the use of the syncrolift;

The Commission further identified the syncrolift as an essential facility that market players require in order to effectively compete in the ship repair market. As the proposed transaction will result in Namport (which is estate owned entity with a dual role as a regulator and a player in the relevant market) acquiring control (100% ownership) of EBH Namibia and the floating docks and provided that barriers to entry into the upstream market are high, availing the floating docks as common user facilities will promote competition within the market.
12. 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. 114

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: BW KUDU LTD // NATIONAL PETROLEUM CORPORATION OF NAMIBIA
CASE NO.: 2017FEB0005MER

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 **17 February 2017**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission’s decision is based on the following grounds:
 - (i) 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; and
 - (ii) Taking into consideration the conditions imposed by the Minister of Mines and Energy, that the proposed transaction is not likely to raise public interest concerns.

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
