



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 416

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: ALPLA WERKE BETEILIGUNGSGESELLSCHAFT GMBH ("ALPLA") AND
BOXMORE PLASTICS (SA) (PTY) LTD
CASE NO.: 2017AUG0055MER

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 August 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. 417

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: STADIO INVESTMENT HOLDINGS (PTY) LTD //
SOUTHERN BUSINESS SCHOOL OF NAMIBIA CC
CASE NO.: 2017JUL0049MER

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

1. The Commission received notification of the abovementioned proposed merger on **26 July 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. 418

2017

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: ATLANTIS FOODS HOLDINGS (PTY) LTD // BRECO HOLDINGS (PTY) LTD
CASE NO.: 2017AUG0050MER**

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 August 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. 419

2017

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: LONG4LIFE LIMITED // HOLDSPORT LIMITED
CASE NO.: 2017AUG0053MER**

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 August 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. 420

2017

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: TOTAL E&P NAMIBIA B.V. // IMPACT OIL AND GAS NAMIBIA (PTY) LTD
CASE NO.: 2017AUG0052MER**

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

1. The Commission received notification of the abovementioned proposed merger on **9 August 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
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NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 421

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: MR. ARCHIE GRAHAM AND TENBERGEN INVESTMENTS CC // DEMUSHUWA
PROPERTY DEVELOPER (PTY) LTD
CASE NO.: 2017APR0021MER

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 April 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. 422

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: DIABLO TRADING (PTY) LTD // STUTTAFORDS
STORES (NAMIBIA) (PTY) LTD
CASE NO.: 2017AUG0051MER

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 August 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. 423

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: MMI HOLDINGS NAMIBIA LIMITED // QUANTA INSURANCE LIMITED
CASE NO.: 2017JUL0048MER

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 July 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. 424

2017

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: SEAWORK FISH PROCESSORS (PTY) LTD
// BENGUELLA PROPERTIES (PTY) LTD
CASE NO.: 2017JUL0045MER

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 August 2017**.
2. Please note that the Commission has **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, it however, give 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 119 employees in the employment of the target undertaking, the Commission found it necessary to approve the acquisition of Benguella Properties (Pty) Ltd by Seawork Fish Processors (Pty) Ltd subject to the following conditions:
 1. *There shall be no retrenchment of employees of the merged undertakings below management level as a result of the merger for a period of 2 years from the date of the approval of the merger, after which all the conditions indicated below, shall lapse.*
 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 of Benguella Properties (Pty) Ltd and its subsidiaries be employed 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 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 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 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 on the following dates:*
 - 9.1 *30 November 2017, for the status as at the date of the implementation of the transaction (initial report);*
 - 9.2 *Thereafter on a bi-annual basis, starting 1 May 2018.*
10. *The merger compliance reports must include but is not 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 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 (which condition is only relevant for the first report);*
 - 10.1.3 *copies of the new employment contracts, under which the employees of the target undertaking 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 (which condition is only relevant for the first report);*
 - 10.1.4 *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;*
 - 10.1.5 *the reasons for the retrenchments; and*
 - 10.2. *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 Seawork Fish Processors (Pty) Ltd and Benguella Properties (Pty) Ltd 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. *“The Commission” means the Namibian Competition Commission.*
 14. *“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.*
 15. *“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).*
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.*

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