



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 20 July 2018

No. 6655

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 375

2018

NOTICE OF DETERMINATION MADE BY 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. 376

2018

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER: UNITED PROPERTY MANAGEMENT (PTY) LTD //
JN HAMMAN BEHERENDE BELEGGINGS (PTY) LTD
CASE NO.: 2017DEC0088MER

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 **19 December 2017**.
2. Based on the Commission's investigation the proposed transaction will result in the merged undertaking acquiring a dominant position in *the market for hotel accommodation with star grading 3 to 5* as envisaged by section 47(2) of the Competition Act, 2003. The Commission found that the merged entity is likely to abuse its dominance.
3. In order to prevent potential anticompetitive effects in the market and to protect employment the Commission **approves the proposed merger 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.*
 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 JN Hamman Beherende Beleggings (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.*

4. *Within 12 months of the implementation of the transaction the acquiring group must enter into a management agreement with an independent Hotel Operator that vests such Hotel Operator with control over the management of Safari Court Hotel;*
5. *Within 24 months of the implementation of the transaction the Safari Court Hotel shall be operated and managed by an independent hotel operator.*
6. *For a period of ten years the merged entity shall ensure that Safari Court Hotel is operated and controlled by an independent hotel operator vested with control over the management of Safari Court Hotel;*
7. *Should the merged undertaking change the Hotel Operator at Safari Court, the new management agreement that will be entered into will be subject to condition 4.*
8. *The obligation in terms of condition 6 above will not in any way effect the notification requirements provided for in the Competition Act for transactions that meet the requirements of the Competition Act for merger notification.*
9. *The Commission shall be prepared, on good cause shown, to consider an extension of either or both of the periods indicated in 4. and 5. above, provided that such request is made in writing, giving detailed reasons for the requested extension/s.*

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS

Merger Specific Retrenchments

10. *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:*
 - a. *a list of employees likely to be affected by the merger specific retrenchments;*
 - b. *the number and categories of employees likely to be affected by the merger specific retrenchments, as well as their job titles;*
 - c. *the reasons for the retrenchments;*
 - d. *a description of the steps taken by the merged undertakings to avoid the merger specific retrenchments; and*
 - e. *the intended date of the merger specific retrenchments.*
11. *The Commission must within 20 business days of receipt of the correspondence referred to in paragraph 4 above indicate to the merged undertaking whether:*
 - a. *it agrees to these merger specific retrenchments;*
 - b. *does not agree to the merger specific retrenchments; or*
 - c. *it requires further information from the merged undertaking prior to giving its consent.*

12. *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.*
13. *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

14. *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:*
 - 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 the merged undertakings to avoid the non merger specific retrenchments; and*
 - e. *the intended date of the non-merger specific retrenchments. Reporting obligations*
15. *In order for the Commission to monitor compliance with the conditions, as set out in paragraph land paragraph 4-9 above, in addition to the correspondence referred to in paragraphs 10 and 14 above, provide the Commission with reports on the following dates:*
 - a. *31 May 2018, for the status as at the date of the implementation of the transaction (initial report);*
 - b. *Thereafter on a bi-annual basis, starting 1 December 2018;*
16. *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, 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, 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);

- iii. *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);*
 - iv. *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;*
 - v. *the reasons for the retrenchments; and*
- b. *Signed copies of every management agreement that the merged undertaking will enter into with the independent hotel operator(s);*
 - c. *Any additional information that may be required by the Commission to monitor compliance with the Condition.*

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 United Property Management (Pty) Ltd and JN Hamman Beherende Beleggings (Pty) Ltd and any subsidiary of the said entities, subsequent to the merger;

“Independent Hotel operator” means a hotel operator that does not form part of the acquiring group as defined by the Competition Act and Rules;

“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.

“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.*

G. SHILONGO
CHAIRPERSON
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