



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 465

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
MERGER NOTIFICATION: ORVI INVESTMENT HOLDINGS (PTY) LTD // ORANGE RIVER
VINEYARDS INVESTMENT (PTY) LTD

CASE NO.: 2024JUN0034MER

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 June 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 466

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
BROOKFIELD CL HOLDINGS LLC // CASTLELAKE GROUP TOPCO, L.P. AND
CASTLELAKE GROUP GP, LLC

CASE NO.: 2024MAY0035

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 **4 June 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 467

2024

NAMIBIAN COMPETITION COMMISSION
NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
SANTAM NAMIBIA LIMITED // WESTERN NATIONAL INSURANCE COMPANY LIMITED

CASE NO.: 2024MAY0036MER

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 June 2024**.

2. Please note that the Commission has **approved the proposed merger without conditions.**
3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 468

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
SINOMINE (HONG KONG) RARE METALS RESOURCES CO. LIMITED // DUNDEE
PRECIOUS METALS TSUMEB HOLDING (PTY) LTD

CASE NO.: 2024APR0023MER

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 **16 April 2024.**
2. Please note that the Commission has **approved the proposed merger with conditions.**
3. The Commission's decision is based on the grounds that the proposed merger is unlikely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003. However, the merger give raise to public interest concerns, the proposed merger is approved subject to the following conditions:

1. **DEFINITIONS**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 1.1 **“Acquiring Group”** means the total of all undertakings as defined in rule 27(1)(a) (b) and (c) as amended;
- 1.2 **Acquiring Undertaking”** means Sinomine (Hong Kong) Rare Metals Resources Co. Limited;
- 1.3 **“Approval Date”** means the date on which the Merger is approved by the Commission;

- 1.4 “**Commission**” means the Namibian Competition Commission;
- 1.5 “**Competition Act**” means the Competition Act, 2003 (Act No. 2 of 2003);
- 1.6 “**Conditions**” mean the conditions set out in this Annexure A (only);
- 1.7 “**Connected person**” a connected person is defined in relation to each of the following categories of persons:
- 1.7.1 **In relation to a natural person:**
- 1.7.1.1 Any relative of such person (including by adoption) i.e. children and parents, grandchildren, grandparents, brothers and sisters, great-grandchildren, great-grandparents, uncles and aunts, nephews and nieces, the person’s spouse and any person who is a relative of the spouse, the spouse of any of the abovementioned relatives; and
- 1.7.1.2 Any trust of which such a natural person or any relative or spouse referred to above is a beneficiary. A beneficiary means any person named, in the will, trust deed or letter of wishes, as a beneficiary or as a person upon whom the trustee or the trust has a power to confer a benefit from the trust.
- 1.7.2 **In relation to a trust:**
- 1.7.2.1 Any beneficiary of such trust, i.e. any person named as a beneficiary in the trust deed or letter of wishes, or any other person in favour of whom the trustee of the trust exercises the trustee’s discretion; and
- 1.7.2.2 Any connected person in relation to such beneficiary, for example any of the beneficiary’s relatives and any trust of which a relative may be a beneficiary. A trust and connected persons in relations to the beneficiaries of the trust, are connected persons.
- 1.7.3 In relation to a trust (other than a unit trust scheme in property shares, as authorised under the Unit Trust Control Act, 1981 (Act No. 54 of 1981), any other person who is a connected person in relation to such trust. All persons who are connected persons in relation to a trust are connected persons in relation to each other.
- 1.7.4 **In relation to a member of any partnership:**
- 1.7.4.1 Any other member of such partnership; and
- 1.7.4.2 Any connected person in relation to any member of such partnership, for example any of that member’s relatives and any trust in which a relative may be a beneficiary.
- 1.7.5 **In relation to a company:**
- 1.7.5.1 Its holding company as defined in section 1 of the Companies Act, 2004 (Act No. 28 of 2004) (“**the Companies Act**”);
- 1.7.5.2 Its subsidiary, as defined in section 1 of the Companies Act;
- 1.7.5.3 Any other company, where both such companies are subsidiaries (as defined) of the same holding company;

- 1.7.5.4 Any person, other than a company as defined in section 1 of the Companies Act, who individually or jointly with any connected person in relation to such person, holds (directly or indirectly) at least 20% (twenty per cent) of the company's equity share capital or voting rights. The person so contemplated, could be a natural person, trust, close corporation or any entity which is not a company for the purposes of the Companies Act;
- 1.7.5.5 Any other company, if at least 20% (twenty per cent) of the equity share capital of such company is held by such other company, and no shareholder hold the majority voting rights of such company. This will be the case where companies B and C each hold 50% of the equity share capital of company A; both companies B and C will be connected persons in relation to company A;
- 1.7.5.6 Any other company, if such other company is managed or controlled by:
- 1.7.5.6.1 Any person ("A") who or which is a connected person in relation to such company; or
- 1.7.5.6.2 Any person who or which is a connected person in relation to "A".
- 1.7.6 **In relation to a close corporation:**
- 1.7.6.1 Any member of such close corporation;
- 1.7.6.2 Any relative of such member, or any trust which is a connected person in relation to such member; and
- 1.7.6.3 Any other close corporation or company which is a connected person in relation to any member or relative or trust contemplated in 1.7.1 and 1.7.2 above.
- 1.7.7 In relation to a person who is a connected person in relation to any other person in terms of the foregoing provisions of this definition, such other person.
- 1.8 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in Namibia (i.e. business days);
- 1.9 **"Implementation Date"** means the date, which proceeds the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10 **"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);
- 1.11 **"Merged Undertaking"** means the Acquiring Undertaking and the Target Undertaking;
- 1.12 **"Namibian owned and registered"** means a person, including natural and juristic persons, registered in terms of the laws of Namibia, and which is majority owned (above 51%) by Namibian citizens;
- 1.13 **"Target Undertaking"** means Dundee Precious Metals Tsumeb Holding (Proprietary) Limited and entities it controls; and
- 1.14 **"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, workdays, working hours, leave days, sick leave, remuneration, benefits such as pension and medical aid schemes or contributions thereto.

2. **Employment:**

- 2.1 There shall be no retrenchment of Namibian employees of the target undertaking as a result of the merger for three years post-closing of the transaction.
- 2.2 The parties shall maintain a ratio of no less than 92% local employees to foreign employees.
- 2.3 At the level of management and above the parties shall maintain a ratio of no less than 70% local employees to foreign employees.

3. **Procurement: Localisation of all services, goods, or products:**

- 3.1 In all procurement transactions, preference in awarding procurement contracts should be given to undertakings which are Namibian owned and registered, and which are not a connected person to the acquiring group.
- 3.2 Maintain or improve the current procurement policy.

4. **Environmental protection**

- 4.1 That the merged undertaking maintains the existing office dealing with environmental issues with current scope to be maintained or improved aimed at avoiding or containing water and air pollution in the Town and its surroundings.
- 4.2 Implement measures to strengthen environmental auditing and inspections, including the development of an auditing manual, fully capacitated multi-disciplinary auditing team trained in the latest technologies and methodologies to undertake environmental/health audits of their operations in Tsumeb.

5. **Monitoring and reporting procedures in compliance with the conditions**

The Employment Condition:

General

- 5.1 The Target Undertaking shall provide the following information to the Commission:
 - 5.1.1 a list of all the employees at the Target Undertaking which includes their full names, positions and relevant department or division, job grades and remuneration;
 - 5.1.2 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 were 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);
 - 5.1.3 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); and

- 5.1.4 a list of the employees who have left the employment of the Target Undertaking from the time that the merger was approved or since the period covered by the most recent merger compliance report submitted to the Commission.

Merger Specific Retrenchments

- 5.2 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:

- 5.2.1 a list of employees likely to be affected by the merger specific retrenchments;
- 5.2.2 the number and categories of employees likely to be affected by the merger specific retrenchments, as well as their job titles;
- 5.2.3 the reasons for the retrenchments;
- 5.2.4 a description of the steps taken by the merged undertakings to avoid the merger specific retrenchments; and
- 5.2.5 the intended date of the merger specific retrenchments.

- 5.3 The Commission must within 20 business days of receipt of the correspondence referred to in paragraph 5 above indicate to the merged undertaking whether:

- 5.3.1 it agrees to these merger specific retrenchments;
- 5.3.2 does not agree to the merger specific retrenchments; or
- 5.3.3 it requires further information from the merged undertaking prior to giving its consent.

- 5.4 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.

- 5.5 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

- 5.6 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:

- 5.6.1 a list of employees likely to be affected by non-merger specific retrenchments;

- 5.6.2 the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;
- 5.6.3 an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);
- 5.6.4 a description of the steps taken by the merged undertakings to avoid the non-merger specific retrenchments; and
- 5.6.5 the intended date of the non-merger specific retrenchments.

Procurement conditions:

- 5.7 a list of all the service providers contracted by the merged undertaking as at the date of the report which includes:
 - 5.7.1 the full names of all service providers;
 - 5.7.2 country of origin including nationalities of all shareholders of each service provider;
 - 5.7.3 description of the goods, services, or products supplied to the merged undertaking by the relevant service providers;
 - 5.7.4 an indication whether the relevant service provider is a connected person or not;
 - 5.7.5 if a service provider is a connected person, a detailed explanation as to why the specific contract for the provision of goods, services or products was not awarded to a Namibian registered and owned undertaking, and written confirmation that the transaction with the connected party was executed at arm's-length;
 - 5.7.6 if a service provider is a Namibian registered but foreign owned undertaking, a detailed explanation as to why the specific contract for the provision of goods, services or products was not awarded to a Namibian registered and owned undertaking;
 - 5.7.7 if a service provider is a foreign registered undertaking, a detailed explanation as to why the specific contract for the provision of goods, services or products was not awarded to a Namibian registered and owned undertaking;
 - 5.7.8 the monetary value of the goods, services or products provided by each service provider.
- 5.8 a list of all tenders for goods, services or products required by the merged undertaking and which were placed on tender by the merged undertaking for the reporting period including:
 - 5.8.1 the number of responsive bids received from Namibian registered and owned undertakings, connected persons, Namibian registered but foreign owned undertakings, and foreign registered undertakings for each specific tender;

Environmental condition:

- 5.9 Provide the following:
 - 5.9.1 current structure with all positions, roles and responsibilities for all persons involved with environmental protection; and

5.9.2. required qualifications to perform identified roles and responsibilities.

6. **Reporting obligations**

6.1 In order for the Commission to monitor compliance with the conditions, as set out in paragraphs 2 to 5 above, the merged undertaking shall provide the Commission with reports as below:

6.1.1 Within 20 days after the implementation of the transaction (initial report); and

6.1.2 Thereafter on a bi-annual basis, following the initial report.

7. **General**

7.1 The Merged Undertaking shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.

7.2 Should, for any reason, the merged undertaking decides or is prevented from implementing the merger, the merged undertaking shall inform the Commission in writing of such decision and/or prevention.

7.3 The merged undertaking shall submit affidavits (deposed to by its managing director(s)) in accordance with the reporting dates referred to above, to update the Commission and / or confirm its compliance with the conditions for the duration of all conditions.

7.4 The Commission may also request any additional information that may reasonably be required by the Commission to monitor compliance with the Conditions.

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.*

**A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 469

2024

NOTICE OF DETERMINATION MADE BY COMMISSION
IN RELATION TO PROPOSED MERGER: 1466331 B.C. LTD // OSINO RESOURCES CORP

CASE NO.: 2024APR0018MER

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

1. The Commission received notification of the proposed merger on **3 April 2024**.
2. Please note that the Commission **approved the proposed merger with conditions**.

DEFINITIONS

- 2.1 “**Act**” means the Namibian Competition Act, 2003 (Act No. 2 of 2003);
- 2.2 “**Acquiring Undertaking**” means 1466331 B.C. LTD, a newly incorporated company established under the laws of the Province of British Columbia. The acquiring undertaking shall be interpreted to also include: Hainan Shengwei Trading Co., Ltd, Shanghai Shengwei Mining Investment Co., Ltd, and Shanjin International Gold Co., Ltd (formerly known as Yintai Gold Co., Ltd), collectively defined as the “**Acquiring Group**”;
- 2.3 “**Day**” means any day excluding a Saturday, Sunday, or Namibian public holiday;
- 2.4 “**Commission**” means the Namibian Competition Commission, a statutory body established in terms of the Act;
- 2.5 “**Date of Implementation**” means the date on which the Proposed Transaction is implemented by the Merged Undertaking;
- 2.6 “**Employee**” includes all persons employed on a temporally, fixed term or permanent basis;
- 2.7 “**Exclusive prospecting licence**” means an exclusive prospecting licence as defined in terms of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992);
- 2.8 “**Good Cause**” shall have its normal meaning as interpreted under the Act and the Common law, save that ‘good cause’ shall additionally mean that the circumstances giving rise to the applicable member of the Acquiring Group’s request in terms of the change in circumstances provision of this notice, shall require that, the circumstances giving rise to the request could not reasonably have been foreseen by the applicable member of the Acquiring Group at the time of the merger and could not reasonably be mitigated or addressed in another matter;
- 2.9 “**LOM**” means the current life of a mine as defined in terms of these conditions, calculated from the date of commercial production (i.e. once the completion test has been achieved, the mine is fully commissioned and commercial production has commenced), and expiring on the actual date determined by the merged undertaking to close the mine, which period excludes the construction period prior to the mine commencing operations (i.e. the period preceding commercial production);
- 2.10 “**Merger Specific Retrenchment(s)**” means a retrenchment reasonably led by an imminent change in policy solely related to the merger and such a change in policy could not be a rational or lawful response to economic, market or operational conditions that could equally have been embarked on in the absence of the merger. For the avoidance of doubt, Merger Specific Retrenchments do not include: any voluntary separation, resignation, dismissal as a result of a disciplinary process and voluntary early retirement; any other retrenchment on grounds recognized in law, including any retrenchment on operational grounds which are not related to the merger;
- 2.11 “**Mine**” means a mine as defined in terms of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992), to be exploited under any currently held license or license to be applied for on a future date;
- 2.12 “**Mining licence**” means a mining licence as defined in terms of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992);

- 2.13 “**Non-Merger Specific Retrenchments**” means all retrenchments, other than Merger Specific Retrenchments;
- 2.14 “**Merged Undertaking**” means both Acquiring Undertaking and Target Undertaking;
- 2.15 “**Procurement Policy**” means the procurement, sourcing, and tender policy by the merged undertaking;
- 2.16 “**Proposed Transaction**” means the transaction between the Acquiring Undertaking and Target Undertaking in terms of which the Acquiring Undertaking will acquire all the issued and outstanding common shares of the Target Undertaking;
- 2.17 “**Reporting Period**” means the period during which the merged undertaking is required to report to the Commission on its compliance with the relevant conditions attached to the merger determination, the duration of which depends on the obligations under the respective conditions;
- 2.18 “**Target Undertaking**” means Osino Resources Corp., a Canadian company incorporated in the province of British Columbia under the British Columbia Business Corporations Act (with incorporation number: BC0741084). The meaning of target undertaking shall be interpreted to mean the primary target undertaking, and all subsidiaries forming part of the Osino group of companies; and
- 2.19 “**Undertaking**” means an undertaking as defined in terms of the Act.

3. **Employment:**

- 3.1 No merger specific retrenchments by the merged undertaking for a period of three years (36 months) after the date of implementation.
- 3.2 The condition shall not apply to any employee who may in the ordinary course of business be fired, be dismissed, retire, or resign.
- 3.3 During the LOM, the merged undertaking shall ensure that at all times thereto, the merged undertaking shall employ Namibian citizens (which includes permanent residents) in all positions of employment for job bands A and B, which positions of employment shall be determined by the Paterson job grading system.
- 3.4 For the LOM, the merged undertaking shall use its best efforts to maintain a ratio of at least 90% (ninety percent) local employees to foreign employees, such that where the relevant skills and employees are not available, the merged undertaking will be able to fall below this ratio on good cause shown. This ratio shall be determined based on an average percentage calculated over the applicable Reporting Period.
- 3.5 For the LOM, the merged undertaking shall use its best efforts to maintain a ratio of at least 80% (eighty percent) local employees to foreign employees, at the level of management, such that where the relevant skills and employees are not available at this level, the merged undertaking will be able to fall below this ratio on good cause shown. This ratio shall be determined based on an average percentage calculated over the applicable Reporting Period and shall at all relevant times be calculated in relation to the management complement.

4. **Mining License conditions**

- 4.1 The merged undertaking shall ensure compliance with the mining license issued by the Ministry of Mines and Energy, on 15 March 2023, for the LOM.

5. Procurement

- 5.1 For the LOM, the merged undertaking will procure all services, goods, or products with a value below N\$250 000 per project from Namibian owned undertakings, provided such supply is available in Namibia, specifically that the supplier can supply the items on reasonable terms and timeframes in sufficient quantities and the merged undertaking has a degree of discretion on who to buy the relevant supplies from considering the principles of a competitive economy.

6. Corporate Social Investment

- 6.1 The merged undertaking shall ensure the continuous operation and functioning of the Twin Hills Trust, established by the Target Undertaking, and shall further ensure compliance with and development of the Twin Hills Trust funding priorities in the following sectors:
- 6.1.1 Community support: health initiative infrastructure, land, housing, and disaster relief;
- 6.1.2 Education: Early childhood development, supporting high-performing scholars and students, and supporting the provision of higher-quality education;
- 6.1.3 Training and Enterprise Development: Vocational training and skills for youth and young adults, enterprise development, prioritizing women and youth, and training in arts and culture; and
- 6.1.4 Environment: Environmental conservation and rehabilitation.

7. Future notification

- 7.1 Any member of the Acquiring Group desirous of acquiring an interest in a company which is the holder of an exclusive prospecting licence or mining licence, and the Proposed Transaction's thresholds falls below the thresholds provided for in Government Notice No. 307 of 21 December 2015 published under the Competition Act, shall notify the Commission of the transaction, in terms of the Act, before the implementation thereof and subject to the approval (with or without condition(s)) or prohibition by the Commission.
- 7.2 Any member of the Acquiring Group which is desirous of acquiring any immovable property for the purposes of undertaking mining and exploration activities, whether directly or indirectly, and the proposed transactions thresholds falls below the thresholds provided for in Government Notice No. 307 of 21 December 2015 published under the Competition Act, shall notify the Commission of the transaction, in terms of the Act, before the implementation thereof and subject to the approval (with or without condition(s)) or prohibition by the Commission.

8. Compliance Procedures, Monitoring and Reporting Obligations

- 8.1 Merger Specific Retrenchments
- 8.1.1 In the event that the merged undertaking identifies any potential Merger Specific Retrenchments to be implemented within three years (36 months) from the date of implementation, it will notify the Commission thereof at least one month before the intended date of the applicable retrenchments.

The merged undertaking's written notification to the Commission in this regard must include the following:

8.1.1.1 a list of employees likely to be affected by the Merger Specific Retrenchments;

8.1.1.2 the number and categories of employees likely to be affected by the Merger Specific Retrenchments, as well as their job titles;

8.1.1.3 the reasons for the retrenchments;

8.1.1.4 whether the Merger Specific Retrenchments could be avoided by appointing the applicable employees identified for retrenchments to other positions within the merged undertaking; and

8.1.1.5 the intended date of the Merger Specific Retrenchments.

8.1.2 The Commission must, within 10 (ten) business days of receipt of the written notification to it as provided for in paragraph 8.1.1 above, indicate to the merged undertaking, in writing:

8.1.2.1 whether it objects to the Merger Specific Retrenchments and the reasons for such objection; or

8.1.2.2 that it does not object to the Merger Specific Retrenchments.

8.1.3 In so far as the Commission requires any further information from the merged undertaking in relation to a Merger Specific Retrenchment, it shall furnish the merged undertaking with a complete list of all information and documents so required by it.

8.1.4 In the event that the Commission requires further information in respect of the Merger Specific Retrenchments as provided for in 8.1.3 above, it will, within 10 (ten) business days of receiving such information and documents from the merged undertaking, notify the merged undertaking, in writing, as to its position on the Merger Specific Retrenchments.

8.1.5 The Commission will not unreasonably object to or delay its communication to the merged undertaking on the Merger Specific Retrenchments.

8.2 Non-Merger Specific Retrenchments

8.2.1 For the sake of transparency, in the event that the merged undertaking identifies any Non-Merger Specific Retrenchments, within 3 years from the Approval Date, it will inform the Commission of such Non-Merger Specific Retrenchments, at least one month before the intended date on which the retrenchments are to be implemented. The merged undertaking's notification to the Commission in this regard shall contain the following information:

8.2.1.1 a list of employees likely to be affected by the Non-Merger Specific Retrenchments;

8.2.1.2 the number and categories of employees likely to be affected by the Non-Merger Specific Retrenchments, as well as their job titles;

- 8.2.1.3 an explanation of the reasons that give rise to the Non-Merger Specific Retrenchments (including changes to operational requirements);
 - 8.2.1.4 a description of the steps taken by the merged undertaking to avoid the Non-Merger Specific retrenchments; and
 - 8.2.1.5 the intended date of the Non-Merger Specific Retrenchments.
- 8.3 Other Conditions
- 8.3.1 In order to enable the Commission to sufficiently monitor compliance with the conditions as set out above, the merged undertaking shall provide the Commission with merger compliance reports for the applicable Reporting Periods, reporting on its compliance with the aforementioned conditions, and more specifically as provided for and to the extent required below.
 - 8.3.2 In respect of employment, the merged undertaking shall submit its compliance report, at the same time of the merged undertaking's reporting to the Employment Equity Commission on its compliance with the merged undertaking's affirmative action employment plan.
 - 8.3.3 The information to be contained in the merger compliance report referred to in 8.3.2 above, shall be a copy of the Affirmative Action Report of the merged undertaking, as submitted to the Office of the Employment Equity Commissioner from time to time.
 - 8.3.4 In respect of the employment condition, the merged undertaking shall, on an annual basis for the LOM (save for the obligation under paragraph 8.3.4.3, which will be for a period of three years (36 months)), calculated from the date of implementation, provide to the Commission:
 - 8.3.4.1 A list of all job vacancies in the A and B band, which band is determined by the Paterson job grading system, within the Republic of Namibia;
 - 8.3.4.2 A list of all current employees employed in the A and B band, which band is determined by the Paterson job grading system, within the Republic of Namibia, and the nationality of such employees;
 - 8.3.4.3 A list of all previous employees fired, dismissed, retired, or resigned, indicating the reason for the termination of such employment.
 - 8.3.5 In respect of the procurement condition, the merged undertaking shall, on an annual basis, calculated from the date of implementation, provide to the Commission:
 - 8.3.5.1 The procurement policy;
 - 8.3.5.2 A list of the merged undertaking's major suppliers including the following details:
 - 8.3.5.2.1 Name of supplier;
 - 8.3.5.2.2 Company registration;
 - 8.3.5.2.3 Ownership; and

8.3.5.2.4 Value of procurement.

- 8.3.6 In respect of the mining licence conditions, the merged undertaking shall on an annual basis, calculated from the date of implementation, provide to the Commission, a copy of any reports submitted to the Ministry of Mines and Energy detailing a detailed statement of compliance with the conditions of the mining licence.
- 8.3.7 In respect of the corporate social investment conditions, the merged undertaking shall on an annual basis calculated from the date of implementation, provide to the Commission, a copy of the latest available Sustainability Report containing details of the planned initiatives under the Twin Hills Trust, and furthermore, a report evincing activities undertaken in terms of the previous corporate social investment plan.
9. **Change in Circumstances:** Any member of the Acquiring Group shall from time to time be entitled, upon Good Cause, to make proposal(s) to the Commission, to the extent that the Commission is empowered in terms of the Act, to consent to the waiver, relaxation, modification and/or substitution of one or more of the conditions set out herein, which consent shall not be unreasonably withheld or delayed.
10. The Commission's decision is based on the following grounds: 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, nor does it give rise to significant public interest concerns. However, given that the target undertaking Mining License 238 was approved with conditions supporting local Namibian beneficiation, and in order to ensure employment and local procurement are safeguarded once the mine begins operating, the Commission has imposed the conditions herein.
11. 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 470

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
MERGER NOTIFICATION: AZULE ENERGY EXPLORATION (KB) LIMITED //
RHINO RESOURCES NAMIBIA LIMITED

CASE NO.: 2024JUN0039MER

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 June 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 471

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
SANDVELD HOLDINGS (PTY) LTD & SANDVELD SAFARIES (PTY) LTD //
ALLAN CILLIERS TROPHY HUNTING AND SAFARIS

CASE NO.: 2024JUL0041MER

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 July 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.

3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 472

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
MERGER NOTIFICATION: VORTEX HOLDINGS (PTY) LTD // JAPONICA INVESTMENTS
NINETEEN (PTY) LTD

CASE NO.: 2024JUN0037MER

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 **10 June 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 473

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
MERGER NOTIFICATION: LESAKA TECHNOLOGIES (PTY) LTD //
ADUMO (RF) (PTY) LTD

CASE NO.: 2024JUN0038MER

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 **10 June 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 474

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
MERGER NOTIFICATION: THE DEVELOPMENT BANK OF NAMIBIA LIMITED //
AFRICAN PRIDE HOSPITALITY (PTY) LTD

CASE NO.: 2024MAY0032MER

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 May 2024**.
2. Please note that the Commission has **approved the proposed merger subject to conditions**.

3. The Commission's decision is based on the grounds that the transaction is likely to raise competition concerns, should the Acquiring Undertaking retain the acquired preference shares, after the repayment of the loan by the Target Undertaking.

2. DEFINITIONS

- 2.1 **"A" Class Preference Share Subscription Agreement** means an agreement entered into by and between the parties in accordance with the Restructuring Agreements;
- 2.2 **"Act"** means the Namibian Competition Act, 2003 (Act No. 2 of 2003);
- 2.3 **"B" Class Preference Share Subscription Agreement** means an agreement entered into by and between the parties in accordance with the Restructuring Agreement;
- 2.4 **"Acquiring Group"** means the total of all undertakings as defined in rule 27(1)(a) (b) and (c) as amended;
- 2.5 **"Agreements"** means the restructuring agreements, including any addendums thereto, entered into by and between the merged undertaking;
- 2.6 **"Acquiring Undertaking"** means the Development Bank of Namibia;
- 2.7 **"Business Days"** means any day excluding a Saturday, Sunday or Namibian public holiday;
- 2.8 **"Commission"** means the Namibian Competition Commission, a statutory body established in terms of the Act;
- 2.9 **"Competition Act"** means the Competition Act, 2003 (Act No. 2 of 2003);
- 2.10 **"Dissimilar Conditions"** means, for purposes of paragraph 3.3 of these conditions, any condition the Acquiring Undertaking would not in the ordinary course of business consider merely by virtue of the proposed transaction. Nothing in this condition shall be interpreted to fetter the discretion of the Acquiring Undertaking in the ordinary course of business, and the standard of a dissimilar condition shall be measured against any anti-competitive conduct in terms of the Competition Act;
- 2.11 **"Implementation Date"** means the date on which the Proposed Transaction is implemented by the Merged Undertakings;
- 2.12 **"Merged Undertaking"** means both Acquiring Undertaking and Target Undertakings;
- 2.13 **"Proposed Transaction"** means the transaction between the Acquiring Undertaking and Target Undertaking in terms of which the Acquiring Undertaking will acquire Class "A" Preference and Class "B" Preference Shares in the shareholding of Target Undertaking; and
- 2.14 **"Target Undertaking"** means African Pride Hospitality Proprietary Limited.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

Disposal of Shares

- 3.1 To ensure the objectives and intentions of the Restructuring Agreements, as submitted to the Commission, are maintained and the Acquiring Undertaking maintains its statutory mandate as contemplated in the Development Bank of Namibia Act, 2002 (Act No. 8 of 2002), the following shall apply:
- 3.2 The Target Undertaking shall within 12 months of repayment of the loan owed to the Acquiring Undertaking redeem the preference in accordance with the A Class and B Class Preference Shares Agreements governing the relationship established by the Restructuring Agreements.

Statutory duties of the Acquiring Undertaking

- 3.3 In relation to performing its duties as prescribed in the Development Bank of Namibia Act, 2002 (Act No. 8 of 2002), the Acquiring Undertaking shall not by virtue of its shareholding in the Target Undertaking apply dissimilar conditions on transactions from undertakings that are engaged in economic activities similar to that of the Target Undertaking in the Khomas Region.

4. MONITORING AND REPORTING PROCEDURES IN COMPLIANCE WITH THE CONDITIONS

Disposal of Shares

- 4.1 The Merged Undertaking shall provide the following information to the Commission:
 - 4.1.1 A Loan Account of the Target Undertaking indicating the loan repayment received by the Acquiring Undertaking from the Target Undertaking and the outstanding balance; and
 - 4.1.2 An update on the estimated date the loan is expected to be repaid.

Statutory duties of the Acquiring Undertaking

- 4.1.4 Details relating to applications formally lodged with the Acquiring Undertaking from customers that are engaged in economic activities similar to that of the Target Undertaking for amounts exceeding N\$50 million; and
- 4.1.5 The decision adopted by the Acquiring Undertaking and reasons for the decision taken in respect of the said applications;
- 4.1.6 Applications referred to in paragraph 4.1.4 shall be strictly limited to 3 – 5 star hotels, located within the Khomas Region.

Reporting Dates

- 4.2 For the Commission to monitor compliance with the conditions, as set out in paragraphs 3 and 4, the Merged Undertaking shall provide the Commission with reports on the following dates:
 - 4.2.1 Written confirmation of the implementation of the transaction, within 10 business days of the implementation date.
 - 4.2.2 Thereafter on an annual basis, calculated from the date of implementation of the proposed transaction.

- 4.2.3 Written confirmation of full and final repayment by the Target Undertaking to the Acquiring Undertaking, within 10 business days of such repayment.

General

- 4.3 The Commission may also request any additional information that may be reasonably required by the Commission to monitor compliance with these conditions.
5. Note that the Commission has authority, in Note that the Commission has the authority in terms of section 48(1) of the Competition 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.*

**A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 475

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
HARLOW INVESTMENT (PTY) LTD // KASSANDARA (PTY) LTD //
ROSTOCK DESERT LODGE CC // ROSTOCK PROPERTY INVESTMENT CC

CASE NO.: 2024MAY0033MER

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 **29 May 2024**.
2. Please note that the Commission has **approved the proposed merger with the following conditions:**

1. Definitions and interpretation

- 1.1 **“Merged Undertaking”** shall mean the combination of the acquiring undertaking and target undertakings and their subsidiaries;
- 1.2 **“Acquiring Undertaking”** shall mean Harlow Investments (Proprietary) Limited Company Number: 2023/1147 with registered business address at No. 3 Kerby Street Windhoek. The acquiring undertaking shall be interpreted to also include Mr Robert Schmid (**“Mr. Schmid”**), born on 2 January 1966, with Passport No. LF71ZW81.Y6 and all subsidiaries of Mr. Schmid (**“Schmid group”**) and forming part of the Schmid Group;
- 1.3 **“Target Undertakings”** shall mean Kassandara (Proprietary) Limited, Rostock Desert Lodge CC, and Rostock Property Investment CC;

- 1.4 **“Commission”** means the Namibian Competition Commission, a statutory body established in terms of the Competition Act, 2003 (Act No. 2 of 2003.);
- 1.5 **“Date of implementation”** means the date on which the proposed merger is implemented by the merging parties; and
- 1.6 **“Proposed Transaction”** means the transaction between the Acquiring Undertaking and Target Undertaking in terms of which the Acquiring Undertaking will acquire the business and business assets of the Target Undertaking.

2. APPLICATIONS TO MINISTER OF AGRICULTURE, WATER AND LAND REFORM

- 2.1 The merged undertaking shall, in terms of section 58 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) apply to the Minister as defined in terms of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995), for written consent prior to the implementation of the proposed transaction.

3. EMPLOYMENT

- 3.1 Following implementation, there shall be no retrenchments of employees below management level of the merged entity as a result of the merger for a period of 3 (three) years from the date of implementation.
- 3.2 For the sake of clarity retrenchments do not include:
 - 1.2.1 voluntary separation, resignation and voluntary early retirement (“voluntary separations”);
 - 1.2.2 retrenchments which are not merger specific or related including that which may be required in the normal course of business through changes in market dynamics and/or the broader economy.
- 3.3 Upon the conversion of Rostock Desert Lodge CC and Rostock Property Investment CC into companies, all the employees of the merged entity will be employed on terms and conditions of employment that are on the whole not less favourable to them than the terms and conditions of employment that prevailed prior to the implementation of the transaction.

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS

4. MERGER SPECIFIC RETRENCHMENTS

- 4.1 In the event that the merged entity identifies any potential merger specific retrenchments below management level, it will request the Commission to agree to these merger specific retrenchments by way of written correspondence at least one month before the retrenchments are due to be effected. The merged entity’s written correspondence must include, but shall not necessarily be limited to:
 - 4.1.1 a list of employees likely to be affected by the merger specific retrenchments;
 - 1.1.2 the number and categories of employees likely to be affected by the merger specific retrenchments, as well as their job titles;
 - 4.1.3 the reasons for the retrenchments;

- 4.1.4 a description of the steps taken by the merged entity to avoid the merger specific retrenchments; and
- 4.1.5 the intended date of the merger specific retrenchments.
- 4.2 The Commission must within 20 (twenty) business days of receipt of the correspondence referred to in paragraph 2 above indicate to the merged entity whether:
 - 4.3.1 it agrees to the merger specific retrenchments;
 - 4.3.2 does not agree to the merger specific retrenchments; or
 - 4.3.3 it requires further information from the merged entity prior to giving its consent.
- 4.3 In the event that the Commission requires further information it will, within 20 (twenty) business days of receiving the aforementioned additional information, indicate in writing to the merged entity whether it agrees to or does not agree to these retrenchments.
- 44 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 merger specific retrenchments it will provide the merged entity with its reasons for withholding its consent in writing.

5. NON-MERGER SPECIFIC RETRENCHMENTS

- 5.1 For the sake of transparency, in the event that the merged entity identifies any non-merger specific retrenchments, it will inform the Commission of these potential retrenchments at least 1 (one) month before these retrenchments are due to be effected. The merged entity's correspondence must include, but is not limited to:
 - 5.1.1 a list of employees likely to be affected by non-merger specific retrenchments;
 - 5.1.2 the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;
 - 5.1.3 an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);
 - 5.1.4 a description of the steps taken by the merged entity to avoid the non-merger specific retrenchments; and
 - 5.1.5 the intended date of the non-merger specific retrenchments.

6. REPORTING OBLIGATIONS

- 6.1 In order for the Commission to monitor compliance with the conditions, the merged entity must, for the duration of the subsistence of the merger conditions, in addition to the correspondence referred to in paragraphs above, provide the Commission with reports:
 - 6.1.1 Evincing compliance with section 58 of the Agricultural (Commercial) Land Reform Act 6 of 1995, and the outcome of such application, within five (5) days of the outcome of such application;
 - 6.1.2 on the Implementation Date informing the Commission of the implementation of the transaction, within five (5) days of implementation, or any decision not to implement; and
 - 6.1.3 thereafter on a bi-annual basis for the duration of the three years.

- 6.2 The merger compliance reports must include but shall not necessarily be limited to the following information:

Regarding employment

- 6.2.1 a list of all the employees as at the date of the report which includes their full names, positions, job grades and remuneration;
- 6.2.2 copies of the existing (pre-proposed transaction) employment contracts 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 entity 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);
- 6.2.3 a list of the employees recruited, promoted and 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;
- 6.2.4 the reasons for the retrenchments;
- 6.2.5 a list of employees dismissed (if any) as a result of disciplinary conduct as provided for under the relevant and applicable policies of the merged entity; and
- 6.2.6 The contact details of the dismissed employees;
- 5.2.7 any additional information that may reasonably be required by the Commission to monitor compliance with the condition.
3. The Commission's decision is based on the 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 does, give rise to significant public interest concerns, especially employment and requires an approval from the Minister of Agriculture, Water and Land Reform. Thus, in order to safeguard employment, adhere to the requirement of Section 58 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995), the proposed merger is approved subject to an employment conditions and conditional on getting an approval from the Minister of Agriculture, Water and Land Reform.
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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 476

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
MERGER NOTIFICATION: TERMINAL INVESTMENT (NAMIBIA) PTY LTD //
NEW CONTAINER TERMINAL (NAMPORT)

CASE NO.: 2024MAR0014MER

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

1. The Commission has received notification of the above-mentioned proposed merger on **18 March 2024**.
2. Please note that the Commission has **approved the proposed merger with the following conditions**:

1. **DEFINITIONS**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 1.1 “**Acquiring Group**” means the total of all undertakings as defined in rule 27(1)(a) (b) and (c) as amended;
- 1.2 “**Acquiring Undertaking**” means Terminal Investment (Namibia) Pty Ltd;
- 1.3 “**Approval Date**” means the date on which the Merger is approved by the Commission;
- 1.4 “**Commercially Sensitive Information**” means information such as recent past, current, and future price information, cost information, information about future product offerings, and non-public information of competitors of the MSC Shipping Group in Namibia;
- 1.5 “**Commission**” means the Namibian Competition Commission;
- 1.6 “**Competition Act**” means the Competition Actn 2003 (Act No. 2 of 200);
- 1.7 “**Concession Agreement**” means the concession agreement entered into between Namport and the Acquiring Undertaking in respect of the Target Undertaking, dated 17 June 2024;
- 1.8 “**Conditions**” mean the conditions set out in this Annexure A (only);
- 1.9 “**Days**” means any calendar day other than a Saturday, a Sunday, or an official public holiday in Namibia (i.e., business days);
- 1.10 “**Good Cause**” shall have its normal meaning as interpreted under the Competition Act and the Common law, save that ‘good cause’ shall additionally mean that the circumstances giving rise to the applicable member of the Acquiring Undertaking’s request in terms of change in circumstances provision of this notice, shall require

that, the circumstances giving rise to the request could not reasonably have been foreseen by the applicable member of the Acquiring Undertaking at the time of the merger and could not reasonably be mitigated or addressed in another matter;

- 1.11 “**Implementation Date**” means the date, which follows the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12 “**Proposed Transaction**” means the transaction that was notified to the Commission on 18 March 2024 that concerns the acquisition of control by the Acquiring Undertaking over the Target Undertaking;
- 1.13 “**Maximum Tariffs**” means the regulated maximum tariffs set and adjusted from time-to-time by Namport in accordance with the Namibian Ports Authority Act, 1994 (Act No. 2 of 1994);
- 1.14 “**Merged Undertaking**” means the Acquiring Undertaking and the Target Undertaking;
- 1.15 “**Merger Specific Retrenchment(s)**” means a retrenchment reasonably led by a change in policy solely related to the merger and such a change in policy could not be a rational or lawful response to economic, market or operational conditions that could equally have been embarked on in the absence of the Proposed Transaction. For the avoidance of doubt, Merger Specific Retrenchments do not include: any voluntary separation, resignation, dismissal as a result of a disciplinary process and voluntary early retirement; any other retrenchment on grounds recognised in law, including any retrenchment on operational grounds which are not related to the Proposed Transaction;
- 1.16 “**MSC**” means MSC Mediterranean Shipping Company SA, a company registered and incorporated under the applicable laws of Switzerland;
- 1.17 “**MSC Shipping Group**” means the part of the Acquiring Group that is engaged in the provision of deep-sea container liner shipping services (for the avoidance of doubt, this defined term excludes TIL and its subsidiaries for the purpose of this document);
- 1.18 “**Namport**” means the Namibian Port Authority, a body corporate established under and operating in accordance with the Namibian Ports Authority Act, 1994 (Act No. 2 of 1994) and the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019);
- 1.19 “**Target Undertaking**” means The New Container Terminal at the Port of Walvis Bay, comprising 40 hectares of new land reclaimed from the bay within Namport’s current jurisdiction, along with certain assets; and
- 1.20 “**TIL**” means Terminal Investment Limited Holding S.A.

2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

In order to address potential concerns arising from the implementation of the Proposed Transaction, the Merged Undertaking shall, for the duration of the Concession Agreement, adhere to the following conditions:

2.1 Fair Pricing and Non-Discrimination

- 2.1.1 Comply with the regulated Maximum Tariffs for terminal services to ensure fair pricing for all shipping lines.

- 2.1.2 Ensure that terminal services are provided on a non-discriminatory basis to all shipping lines.
- 2.1.3 Publish the regulated Maximum Tariffs to prevent unfair pricing practices.

2.2 Protection of Commercially Sensitive Information

- 2.2.1 TIL and its subsidiaries shall not disclose any Commercially Sensitive Information obtained from the Acquiring Undertaking to MSC or any other entity in the MSC Shipping Group.
- 2.2.2 TIL and its subsidiaries, on the one hand, and MSC, the MSC Shipping Group on the other hand, shall maintain their existing strict data firewalls and access controls to prevent the sharing of Commercially Sensitive Information between the Acquiring Undertaking and MSC or any other entity in the MSC Shipping Group.
- 2.2.3 No representative of MSC or any other entity in the MSC Shipping Group will attend or participate in any meeting of the board of directors of the Acquiring Undertaking.

2.3 Turnaround Times

- 2.3.1 Merged undertaking must define clear turnaround times (“TATs”) applicable to all shipping lines (noting that these will vary depending on the specific vessel and service characteristics required) and share these TATs with industry players, especially shipping lines, who may opt to include them in any Terminal Service Agreements (“TSAs”) that they may choose to enter into with the Acquiring Undertaking.
- 2.3.2 Implement a real-time monitoring system for tracking turnaround times for all shipping lines using the terminal.
- 2.3.3 Implement technologies to collect real-time data on container movements and turnaround times within the terminal

2.4 Equal Service Levels

- 2.4.1 Develop and enforce uniform operational procedures for terminal services to ensure equal treatment of all shipping lines.
- 2.4.2 Establish a formal complaint resolution mechanism for shipping lines to report any perceived unfair treatment or service discrepancies.

2.5 Employment condition

- 2.5.1 There will be no merger specific retrenchments for a period of six years from date of implementation.
- 2.5.2 The Acquiring Undertaking will ensure that, at a minimum, 80% (eighty percent) of its total workforce in year 1 (one) and 2 (two) of the concession period, 90% (ninety percent) of its total workforce from year 3 (three) to year 5 (five) of the concession period, 95% (ninety-five percent) of its total workforce from year 6 (six) onward of the concession period, will be Namibian Citizens, subject to the availability of the required profiles in terms of skills set, training and experience. Where expatriate employees are employed, the Acquiring Undertaking will appoint understudies for each of the expatriates in terms of the Affirmative Action Act.
- 2.5.3 During the first 5 (five) years of the concession period, the Acquiring Undertaking might need to employ expatriate staff in management positions to ensure the successful implementation of the project. However, the

Acquiring Undertaking will ensure that at a minimum 95% (ninety-five percent) of all managerial positions are filled by Namibian Citizens from year 6 (six) onward of the Concession Period.

3. MONITORING PROCEDURES IN COMPLIANCE WITH THE CONDITIONS

The merged undertaking shall provide the following information to the Commission to aid in monitoring of the conditions:

3.1 Fair Pricing and Non-Discrimination:

- 3.1.1 Submit detailed pricing reports to the Commission that include information pertaining to any discounts or special rates offered.
- 3.1.2 Submit to the Commission a transparent and standardized pricing list (including but not limited to discounts, rebates, etc.) for all terminal services offered, to prevent unfair pricing practices.
- 3.1.3 Provide list of customers of the merged entity in respect of terminal services provided, and which list is to include contact person and contact details.

3.2 Protection of Commercially Sensitive Information:

The parties will provide the Commission with minutes, agendas, and attendance registers of meetings of the board of the Acquiring Undertaking.

3.3 Monitoring of Turnaround Times

- 3.3.1 Provide a report in relation to TATs and any TSAs produced and active during the monitoring period.
- 3.3.2 Provide access logs for container movements and shipping lines access of the terminal.

3.4 Equal Service Levels

Provide reviews of service levels provided to different shipping lines to ensure consistency and fairness.

3.5 Employment

- 3.5.1 A list of all the employees at the Acquiring and Target Undertakings which includes their full names, positions and relevant department or division, job grades and remuneration; and
- 3.5.2 A list of the employees who have left or joined the employment of the Acquiring and Target Undertakings from the time that the merger was approved or since the period covered by the most recent merger compliance report submitted to the Commission.

4. REPORTING PROCEDURES IN COMPLIANCE WITH THE CONDITIONS

In order for the Commission to monitor compliance with the conditions, as set out in the merger conditions, the merged undertaking shall provide the Commission with reports on the following dates:

- 4.1 Written confirmation of the implementation of the transaction, within 10 business days of the implementation date, alternatively, any decision not to implement the transaction;

- 4.2 Within 45 (forty-five) Days of the first anniversary of the Implementation Date, and thereafter annually within 45 (forty-five) Days of each subsequent anniversary, for a period of 6 (six) years (“**Initial Reporting Period**”).
- 4.3 At the end of the Initial Reporting Period, the Commission may, on good cause shown, require that the Acquiring and Target Undertakings extend the Initial Reporting Period by a period of 3 (three) years (the “**Extending Reporting Period**”).
- 4.4 Upon expiry of the Initial Reporting Period or the Extended Reporting Period (if applicable), the Commission may request that the Acquiring and Target Undertakings provide it with any information that it requires to confirm compliance with the Conditions.

5. **CHANGE IN CIRCUMSTANCES**

Any member of the Acquiring Group shall from time to time be entitled, upon good cause, to make proposal(s) to the Commission, to the extent that the Commission is empowered in terms of the Act, to consent to the waiver, relaxation, modification and/or substitution of one or more of the conditions set out herein, which consent shall not be unreasonably withheld or delayed.

6. **GENERAL**

- 6.1 The Acquiring Undertaking and Namport shall circulate a copy of the Conditions to their respective employees within 10 (ten) days of the Approval Date.
 - 6.2 As proof of compliance, a senior Director of the Acquiring Undertaking and Namport respectively shall, within 10 (ten) days of circulating the conditions, submit an affidavit attesting to the circulation of the conditions and provide a copy of the notice that was sent to such employees.
 - 6.3 The Acquiring Undertaking shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
 - 6.4 The Acquiring Undertaking shall submit an affidavit (deposed to by a senior Director) in accordance with the reporting dates referred to above, to update the Commission and / or confirm its compliance with the conditions for the duration of all conditions.
 - 6.5 The Commission may also request any additional information that may reasonably be required by the Commission to monitor compliance with the Conditions.
 - 6.6 All correspondence in relation to the Conditions shall be submitted to the following email address: johannes.ashipala@nacc.com.na.
7. The Commission’s decision is based on the grounds that the proposed transaction is likely to affect competition and employment negatively, and such is a ground envisaged by section 47(2) of the Competition Act, 2003.
 8. 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.*

**A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 477

2024

**NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER: MERGER NOTIFICATION:
AMS MEAT SUPPLIES CC AND AFRICAN MEAT SUPPLIES CC**

CASE NO.: 2024JULY0040MER

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 July 2024**.
2. Please note that the Commission has **approved the proposed merger with the following conditions:**
3. **DEFINITIONS**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 3.1 “**Acquiring Group**” means the total of all undertakings as defined in rule 27(1)(a) (b) and (c) as amended;
- 3.2 “**Primary Acquiring Undertaking**” means AMS Meat Supplies CC;-
- 3.3 “**Approval Date**” means the date on which the Merger is approved by the Commission;
- 3.4 “**Commission**” means the Namibian Competition Commission;
- 3.5 “**Competition Act**” means the Competition Act, 2003 (Act No. 2 of 2003); and
- 3.6 “**Conditions**” mean the conditions set out in this notice of determination;
- 3.7 “**Days**” means any calendar day other than a Saturday, a Sunday, or an official public holiday in Namibia (i.e., business days);
- 3.8 “**Effective Date**” means a date 60 (sixty) days after the completion date on which date the payment of the purchase consideration is due and payable.
- 3.9 “**Implementation Date**” means the date, expected to be subsequent to the Approval Date, on which the Merger is implemented by the Merged Undertaking.;
- 3.10 “**Labour Act**” means the Labour Act , 2007 (Act No. 11 of 2007);
- 3.11 “**Merged Undertaking**” means the Acquiring Undertakings and the Target Undertaking;
- 3.12 “**Merger**” means the implementation of the Proposed Transaction;
- 3.13 “**Proposed Transaction**” means the transaction that was notified to the Commission on 1 July 2024 that concerns the acquisition by the Acquiring Undertakings of the Target Undertaking;
- 3.14 “**Purchase Consideration**” means the total cost payable, in cash or otherwise, by the acquiring undertaking to the target undertaking under the proposed transaction; and

3.15 “**Target Undertaking**” means African Meat Supplies CC;

4. **CONDITIONS TO THE APPROVAL OF THE MERGER**

4.1 Employment condition (the “**Employment Condition**”)

4.1.1 The merged undertaking shall take over every employee of the target undertaking, inclusive of managerial staff, as at the effective date, subject to the following:

4.1.1.1 The remuneration and benefits and employment contracts of the employees as on the effective date, shall be retained and remain the same thereafter;

4.1.1.2 Accrued leave and other benefits, inclusive of years of service etc., shall not be affected in any way by the takeover of such employees;

4.1.1.3 To give effect to the above condition(s), the target undertaking shall cede, assign, and delegate the existing employment contracts individually over to the acquiring undertaking who shall accept such cession, assignment, and delegation in writing, subject to the acceptance thereof of every employee;

4.1.1.4 The target undertaking shall notify all the employees within 30 days from the date of signature of the proposed sale and purchase of the business as a going concern and shall advise all employees of the takeover of the employees;

4.1.1.5 Should any or more of the employees refuse or be unwilling to accept the transfer of their contracts of employment, the target undertaking shall engage with such employees in terms of the Labour Act and shall comply with the procedures as set out in section 34 of the Labour Act and other relevant provisions dealing with the retrenchment of employees.

4.1.2 No merger specific retrenchments by the merged undertaking for a period of three years after the Implementation Date.

4.1.3 The condition shall not apply to any employee who may in the ordinary course of business be fired, be dismissed, retire, or resign.

5. **MONITORING AND REPORTING PROCEDURES IN COMPLIANCE WITH THE CONDITIONS**

The Employment Condition:

General

5.1 The Merged Undertaking shall provide the following information to the Commission:

5.2.1 A list of all the employees at the target undertaking, which includes their full names, positions and relevant department or division, job grades, remuneration, accrued leave and other benefits as at the effective date;

5.2.2 Copies of the new employment contracts, under which the employees of the target undertaking are employed by the Merged Undertaking, for each job and 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 and position; and

Reporting dates

5.3 In order for the Commission to monitor compliance with the Conditions, the Merged Undertaking shall provide the Commission with merger compliance reports on the following dates:

5.3.1 14 February 2025;

5.3.2 Thereafter on a bi-annual basis, until the expiry of the conditions imposed.

General

5.4 The Merged Undertaking shall inform all employees of the target undertaking of the above employment conditions within 10 (ten) days of the approval date.

5.5 The Merged Undertaking shall provide to the Commission an affidavit under oath, confirming compliance with paragraph 5.4, and evincing compliance with such paragraph, by producing a register containing the names, signatures, and date of signature, of each employee, for the day on which they were informed of these conditions. The Merged Undertaking shall provide the Commission with such affidavit within fifteen (15) days of the approval date.

5.6 The Merged Undertaking shall inform the Commission in writing of the Implementation Date within 10 (ten) days of its occurrence.

5.7 Should, for any reason, the merged undertaking decides or is prevented from implementing the merger, the merged undertaking shall inform the Commission in writing of such decision and/or prevention.

5.8 The merged undertaking shall submit affidavits (deposed to by its managing director(s)) in accordance with the reporting dates referred to above, to update the Commission and / or confirm its compliance with the conditions for the duration of all conditions.

5.9 The Commission may also request any additional information that may reasonably be required by the Commission to monitor compliance with the Conditions.

5.10 All correspondence in relation to the Conditions shall be submitted to the following email address: bradley.khoa@nacc.com.na .

6. The Commission's decision is based on the grounds that the proposed transaction is likely to affect employment negatively, and such is a ground envisaged by section 47(2) of the Competition Act, 2003.

7. 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 478

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
SALT EQUITY 1 LP ACTING VIA ITS GENERAL PARTNER SALT
CAPITAL GP LIMITED // MEDFAM HOLDINGS (PTY) LTD

CASE NO.: 2024JULY0045MER

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

1. The Commission has received notification of the above-mentioned proposed merger on **18 July 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 479

2024

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
CATAPULT GROUP (PTY) LTD (CATAPULT) // UNION TILES
(PTY) LTD (UNION TILES) AND PHOENIX MACHINE PROPERTIES
(PTY) LTD (PHOENIX)

CASE NO.: 2024MAY0030MER

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 **6 May 2024**.
2. Please note that the Commission has **approved the proposed merger without conditions**.

3. The Commission's decision is based on the grounds that the proposed merger 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION
