



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 13 April 2011

No. 4686

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## General Notices

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### NAMIBIAN COMPETITION COMMISSION

No. 74 2011

#### NOTICE OF REFERRAL TO INSPECTOR FOR INVESTIGATION AND REPORT

Competition Act, 2003 (Act No. 2 of 2003)  
(Section 47(3), Rule 29)

**ELRIN FINANCIAL SERVICES (PTY) LTD AND FINBOND PROPERTY FINANCE LIMITED  
CASE NO.: 2009JUL0012MER**

1. The Commission has received notification of the above-mentioned proposed merger on 31 July 2009
2. Please note that the Commission has referred the particulars of the proposed merger to an inspector, Mr. Mihe Gaomab II for investigation and a report in relation to the criteria referred to in section 47(1) of the Act.

**F. HANGULA**  
**MEMBER: COMPETITION COMMISSION**

14 September 2009

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**NAMIBIAN COMPETITION COMMISSION**

No. 75

2011

**NOTICE OF REFERRAL TO INSPECTOR FOR INVESTIGATION AND REPORT**

Competition Act, 2003 (Act No. 2 of 2003)  
 (Section 47(3), Rule 29)

**MERGER NOTIFICATION:**  
**DUNDEE PRECIOUS METALS INC // NAMIBIA CUSTOM SMELTERS (PTY) LTD**  
**CASE NO.: 2010JAN0024MER**

1. The Commission has received notification of the above-mentioned proposed merger on 03 February 2010.
2. The approval of this proposed merger is subject to the condition that it conforms to the relevant legislation laid down in the *Export Processing Zone Act (Act No. 9 of 1995)*, as amended.

In terms of section 42 and 44(1) of the Competition Act, 2003, the Commission rules that this is a “vertical merger” and the analysis of the merger determination factors stated in section 47(2) of the Act is summarised as follows:

<b>Merger Determination Factor</b>	<b>Summarised Analysis</b>
Extent to which the proposed merger would be likely to prevent or lessen competition or to restrict trade or the provision of any service or to endanger the continuity of supplies or services.	The merger is not going to change the structure of the relevant market since the acquiring undertaking, Dundee Precious Metals, is not a player in that market. It is therefore not going to have any effects on competition in the market.
Extent to which the proposed merger would be likely to result in any undertaking, acquiring a dominant position in a market or strengthening a dominant position in a market.	The target undertaking, Namibia Custom Smelters, already monopolises the relevant market, and the merger is thus not going to strengthen the undertaking’s dominance of that market.
Extent to which the proposed merger would be likely to result in a benefit to the public which would outweigh any detriment which would be likely to result from any undertaking acquiring a dominant position in a market or strengthening a dominant position in a market.	In spite of Namibia Custom Smelters’ existing dominance of the relevant market, the merger will likely result in substantial public benefits, including: (i) employment generation; and (ii) foreign exchange earnings from increased exports of blister copper.
Extent to which the proposed merger would be likely to affect a particular industrial sector or region	The merger will positively affect the copper smelting industry in Namibia from increased production.
Any benefits likely to be deprived from the proposed merger relating to research and development, technical efficiency, increased production, efficient distribution of goods or provision of services and access to markets.	The acquiring undertaking, Dundee Precious Metals intends to invest substantial amounts of money in improving both the technical and environmental performance of the smelter to be acquired.  Dundee Precious Metals’ Chelopech copper mine in Bulgaria is also undergoing a substantial expansion, and all copper concentrate produced at the mine is expected to be processed by Namibia Custom Smelters.

**L. MURORUA  
CHAIRPERSON  
COMPETITION COMMISSION**

19 February 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 76

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE - DöMEL INVESTMENTS CC // GLOBAL ROOFING  
SOLUTIONS (PTY) LTD  
CASE NO.: 2009DEC0020MER**

1. The Commission has received notification of the abovementioned proposed merger on **11 December 2009**.
2. Please note that the Commission has **approved the proposed merger**.
3. The **evaluation** of the transaction found that even though the merging parties sell and provide more or less the same roofing products and materials, the merger is more of a vertical nature than a horizontal nature, because the parties are not direct competitors on the Namibian market, with the target firm actually being a customer of the acquiring firm.

An **analysis** of the relevant factors that the Commission took into account in terms of section 47(1) of the Competition Act in making determinations on proposed mergers showed that the proposed merger is between a South African company and a Namibian undertaking which has always enjoyed a supplier/customer relationship. The Namibian undertaking is the South African company's only customer in Namibia. The merger is therefore only going to formalize that relationship between the merging parties with no possibility of market foreclosure to third parties. Stakeholders consulted expressed no concerns on the merger transaction. The merger is not likely to prevent or lessen competition or restrict trade or the provision of any service or to endanger the continuity of the concerned supplies or services.

4. 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.*

**L. MURORUA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

19 February 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 77

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED ACQUISITION OF SEESA NAMIBIA BY RZT ZELPY AND OTHERS  
CASE NO.: 2009Apr0004MER**

1. The Commission has received notification of the abovementioned proposed merger on **23 January 2009**.
2. Please note that the Commission has **conditionally approved the proposed merger**.
3. The conditional approval of the proposed merger is **subject** to the **conditions** listed below.
4. The Commission has approved the merger subject to the following **conditions**:
  - (i) That SEESA Labour Namibia (Proprietary) Limited not be involved in any mergers and acquisitions in the relevant labour consulting market in Namibia for a period of 5 years; and
  - (ii) That SEESA Labour Namibia (Proprietary) Limited enter into a competition compliance program and agreement with the Commission.
5. The **reasons** for the conditional approval of the proposed merger are:
  - While on the face of it, the conglomerate nature of the merger should not raise serious competition concerns since the transaction would not change the structure of any market in Namibia, the concerns raised by the stakeholders over the transaction have implications on competition in the relevant market if they are not addressed.
  - Stakeholder concerns raised over the merger, which put the predominantly small operators in the relevant market at a competitive disadvantage, included: (i) SEESA Namibia's 'unorthodox' methods of attracting clients from its market competitors, including offering clients some form of insurance services without the regulatory guidance of the Namibian Financial Institutions Supervisory Authority (NAMFISA) and misrepresenting the provisions of the Labour Act (Act No. 11 of 2007); (ii) SEESA Namibia's overly aggressive marketing methods, and sometimes misleading advertising; and (iii) SEESA Namibia's attempts to dominate the relevant market through acquisitions and takeovers of competing undertakings.
  - The Commission also noted that SEESA Namibia assumed the leading market position in terms of number of clients at the expense of other market players, and also that at least one other player, the National Organisation for Small & Medium Employers of Namibia (NOSMENA) has since exited the market following SEESA Namibia's market entry.
6. 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.*

**F. HANGULA**

**MEMBER: NAMIBIAN COMPETITION COMMISSION**

14 September 2009

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**NAMIBIAN COMPETITION COMMISSION**

No. 78

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**LIBERTY LIFE NAMIBIA LIMITED AND UNITED FUNERAL INSURANCE LIMITED**  
Case No.: 2009APR0003MER

1. The Commission has received notification of the abovementioned proposed merger on 2 April 2009.
2. Please note that the Commission has approved the proposed merger.
3. The approval of the proposed merger is subject to:
  - no conditions
  - the conditions listed on the attached sheet.
4. The reasons for the conditional approval\* / prohibition\* of the proposed merger are:
 

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5. 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.*

\*Delete whichever is not applicable.

**F. HANGULA**

**MEMBER: NAMIBIAN COMPETITION COMMISSION**

9 June 2009

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**NAMIBIAN COMPETITION COMMISSION**

No. 79

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE - IN RE WEST AUSTRALIAN METALS LIMITED,  
MARENICA MINERALS (PTY) LTD  
CASE NO.: 2009AUG0010MER**

1. The Commission has received notification of the abovementioned proposed merger on **28 August 2009**.
2. Please note that the Commission has **approved the proposed merger**.
3. The approval of the proposed merger is subject to the condition that the merger conforms fully to the provisions laid down in the Minerals (Prospecting and Mining) Act, (Act No. 33 of 1992) or amendments thereof in particular to Part X that relates to the Exclusive Prospective Licences (EPL) of the Ministry of Mines and Energy.
4. 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.*

**F. HANGULA****MEMBER: NAMIBIAN COMPETITION COMMISSION**

7 December 2009

**NAMIBIAN COMPETITION COMMISSION**

No. 80

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

Competition Act, 2003 (Act 2 of 2003)  
(Section 47(7), Rule 30)

**PROPOSED MERGER NOTICE - IN RE KAAP AGRI NAMIBIA (PTY) LTD,  
BLAAUWBERG TRADING CC  
CASE NO.: 2009OCT0014MER**

1. The Commission has received notification of the abovementioned proposed merger on **1 October 2009**.
2. Please note that the Commission has conditionally **approved the proposed merger**.

3. The conditional approval of the proposed merger is subject to the **conditions indicated** below.
4. The Commission has approved the merger subject to the following **conditions that** -
  - (a) it is subject to the merit of any contrary findings on stakeholder consultations on the proposed merger,
  - (b) the merger parties further informed Commission within three months of this merger that the merger has resulted in the appointment of staff to man the proposed branch in the relevant market.
5. The reasons for the conditional approval of the proposed merger are:
  - The competition analyses have shown that the proposed mergers is not likely to result in substantial reduction or prevention of competition in the relevant markets, nor result in the creation of dominant positions.
  - Because of the time constraint and the urgency of approving the merger, Commission could not engage with the concerned stakeholders within the relevant market to gauge merit on their concerns for the merger. Hence subject to any contrary findings from the stakeholder consultations, the competition analyses of this transaction indicated that this merger be approved subject to the merit of the findings from stakeholder consultations.
  - Commission further needs written confirmation from the merger parties within three months of the merger that the merger will result in the creation of up to 40 new jobs in the relevant markets as indicated in the letter addressed to the Commission on 11 November 2009.
6. 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.*

**F. HANGULA**  
**MEMBER: NAMIBIAN COMPETITION COMMISSION**

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**NAMIBIAN COMPETITION COMMISSION**

No. 81

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE - 0824239 B.C. LTD // TEAL NAMIBIA (B) INC  
CASE NO.: 2010APR0026MER**



1. The commission has received notification of the abovementioned proposed merger on **26 April 2010**.
2. Please note that the Commission has **conditionally approved the proposed merger**.
3. The conditional approval of the proposed merger is subject to the **conditions indicated** below.
4. The Commission has approved the merger subject to the following conditions that:
  - (a) **The merger parties make known the post merger board of directors of the new entity;**
  - (b) **0824239 B.C Ltd is committed to develop Otjikoto Gold Project as indicated in the Merger Notice submitted to the Commission; and**
  - (c) **The conditions of the EPLs granted in terms of the Minerals (Prospecting and Mining) Act, 1992, are adhered to.**
5. The reasons for conditional approval of the proposed merger are:
  - The competition analysis have shown that the proposed merger is not likely to result in either substantial lessening or prevention of competition in the relevant market, nor will it result in the creation of dominant positions or causing serious public concerns.
  - To emphasize the importance it attached to developing the Otjikoto Gold Project, with the view to ensure the discovery of economically viable gold deposits within the EPL area, Commission makes it a condition for the approval that there is sustained commitment to ensure foreign direct investment of this nature and to commit on exploration of the said mineral as provided for in the EPL of the Otjikoto Gold Project.
  - Commission engaged the concerned Ministry of Mines and Energy on the notified merger. Commission rules that the approval of this merger be subject to the full provisions laid down in the Minerals (Prospecting and Mining) Act, 1992, and any amendments thereof.
6. 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.*

**L. MURORUA**  
**CHAIRMAN**  
**NAMIBIAN COMPETITION COMMISSION**

16 June 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 82

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE – CURVES LIFESTYLE CENTRE CC // WILHELM  
& BIRGIT ROESENER  
CASE NO.: 20100CT0049MER**

1. The Commission has received notification of the abovementioned proposed merger on the **12<sup>th</sup> October 2010**.
2. Please note that the Commission has **approved the proposed merger with conditions**.
3. **The conditional approval of the proposed merger is subject to the conditions listed below:**
  - that the merging parties ensure that the merger complies with the relevant regulatory requirements for operating gym clubs and health and fitness training in Namibia.
  - that this transaction being a franchise, merging parties are required in terms of section 30 of the Competition Act, 2003, to apply to the Commission for the granting of exemption in relation to any agreement or practice relating to the exercise of any right or interest acquired or protected in terms of any law relating to copyright, patents, designs, trade marks, plant varieties or any other intellectual property rights.
4. The Commission's approval of the merger with conditions is based on the grounds that while the transaction does not give rise to any significant horizontal competition concerns in the health and fitness training industry in Namibia, there should be consistency in terms of its approval by the Commission and compliance with the relevant regulatory requirements of the City of Windhoek regarding the operations of gym clubs. Further, given the fact this is a franchise, the protection of intellectual property rights regarding franchise is not automatic, but merging parties have to apply for exemption in this regard in terms of section 30 of the Competition Act, 2003.
5. 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.*

**L. MURORUA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

23 November 2010

## NAMIBIAN COMPETITION COMMISSION

No. 83

2011

NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGERCompetition Act, 2003 (Act No. 2 of 2003)  
(Section 47(7), Rule 30)PROPOSED MERGER NOTICE – KHAN CONSTRUCTION COMPANY (PTY) LIMITED //  
OLIFA HOTELS AND RESORTS NAMIBIA (PTY) LIMITED  
CASE NO.: 2010OCT0050MER

1. The Commission has received notification of the abovementioned proposed merger on **18 October 2010**.
2. Please note that the Commission has **approved the proposed merger with condition**.
3. **The conditional approval of the proposed merger is subject to the condition listed below:**
  - that the regulatory requirements of the Ministry of Environment and Tourism, and the Namibia Tourism Board as well as the liquor license requirements from the local district magistrate for the accommodation establishments in respect to the Mokuti Lodge be fully complied with.
4. **The reason for the conditional approval of the proposed merger is as follows:**
  - Commission is cognizance of the fact while the transaction may have fully complied with the requirements of the Competition Act, 2003, its approval should be consistent with the regulatory requirements of the Ministry of Environment and Tourism, and the Namibia Tourism Board in respect of hotel establishments and liquor license requirements.
5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

23 November 2010

**NAMIBIAN COMPETITION COMMISSION**

No. 84

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE – OHORONGO CEMENT (PTY) LIMITED // AFRISAM  
NAMIBIA CEMENT (PTY) LIMITED  
CASE NO.: 2010SEPT0046MER**

1. The Commission has received notification of the abovementioned proposed merger on **7 September 2010**.
2. Please note that the Commission has **prohibited the proposed merger**.
3. **The reasons for the prohibition of the proposed merger are the following:**

**3.1 Background**

3.1.1 The proposed merger involves the acquisition of shares by Ohorongo Cement (Pty) Ltd in African Portland Cement Holdings (Pty) Ltd and African Portland Cement Limited which are subsidiaries of AfriSam Properties (Pty), a South African company. African Portland Cement Holdings Limited is in turn the holding company of AfriSam Namibia Cement (Pty) Ltd. The merger transaction further entailed that AfriSam Namibia Cement (Pty) Ltd will acquire a minority shareholding in Ohorongo Cement (Pty) Ltd.

**3.2 Relevant Market**

3.2.1 The relevant product/service market under consideration was identified as the supply and distribution of cement, while the relevant geographic market was identified as the whole of Namibia.

**3.3 Relevant Provisions of the Act**

3.3.1 The transaction is a merger as defined in terms of section 42 of the Competition Act, 2003, and accordingly notifiable to the Commission in accordance with section 44(1) of the Act. The notification by the merging parties on 7 September 2010 was therefore in compliance with the provisions of the Act. In making a determination in relation to a proposed merger, Commission may in terms of section 47(1) of the Act either "(a) give approval for the implementation of the merger; or (b) decline to give approval for the implementation of the merger". Factors that the Commission may consider in making such a determination are provided for in Section 47 (2) of the Act.

**3.4 Commissions Evaluation of the Proposed Merger**

3.4.1 In order to assess the competitive effect of the proposed transaction in Namibia, it is necessary to establish the nature of the cement market in Namibia. The cement market at the moment is characterized as a monopolistic competitive market with the market being shared only by a few number of suppliers.

- 3.4.2 The important indicator of a firm's position in a given relevant market is its market share. Market concentration is a function of the number of firms in a market and their respective market shares. The market share of AfriSam Namibia Cement (Pty) Ltd is disproportionately larger than the other market players in the cement market. Given the larger market share of AfriSam Namibia Cement (Pty) Ltd, the investigation concluded that the firm is currently a significant competitor in the market and exercise considerable dominance in accordance to Rule 36 of the Commencement of the Competition Act, No. 54 of 2008.
- 3.4.3 Commission resolved that the proposed merger will give rise to an increased market power which will put the merger parties in a strong market position to an extent that it would be able to determine inventory supply and pricing of cement independently from its competitors and potentially distort the pro-competitive monopolistically situation evolving in the cement market. The extent of acquiring a dominant position and the strengthening of a dominant position in the relevant cement market due of the proposed merger is indeed plausible as provided for under Section 47 (2) (b) of the Competition Act, 2003.
- 3.4.4 The proposed merger involves Ohorongo Cement (Pty) Ltd and Afrisam Namibia Cement (Pty) Ltd intending to enter an agreement under which Afrisam Namibia Cement (Pty) Ltd will sell and distribute cement under the management and brand of Ohorongo Cement (Pty) Ltd in Namibia and neighbouring countries. Commission views the agreement as exclusive in the context of the provisions of the Competition Act, 2003. Exclusive contracts exists when a firm agrees with another firm to purchase all the goods or services it requires exclusively from one seller with no indication of time duration. The importance of exclusive contracts are made on the basis of investments made on both parties on grounds of technological, efficiency or other pro-competitive gains such as consumer benefit in terms of competitive prices and wider product choices.
- 3.4.5 However, the pro-competitive benefits that are to be made are outweighed by potential anti-competitive effect when the power of the seller is substantial, which relates to Afrisam Namibia Cement (Pty) Ltd in this case. The potentially anticompetitive effect of exclusive contracts relates to the obligatory conditions that are concluded between the buyer and seller on supply inventories and pricing terms of the products. Such exclusive contracts distort the spirit of competition in the relevant market and give rise to either horizontal (between suppliers) and/or vertical arrangements (between the producer and supplier).
- 3.4.6 The exclusive contracts further conditions the competition space of the relevant cement market by dictating the inventories of supply of products between buyers and sellers and only affording to other suppliers when there is a need for a shortfall of supply to be met. The anti-competitive exclusion arising out of these types of contracts results in a strong inclination of entrenched exclusive supply of the product by foreclosing rival suppliers from a larger enough fraction of the market to deprive the rival suppliers of the opportunity to achieve the scale necessary to be effective competitors.
- 3.4.7 The vertical foreclosures arises more strongly when a buyer opts or is induced to sign exclusive contracts with the existing dominant firm, of which such situation has the propensity to negatively impact on the likelihood of entry

of new players and affects the bargaining power of the existing suppliers, who are as a response then more likely to enter into exclusive contracts. The exclusive contracts will therefore have a significant snowball effect of preventing or lessening competition or restrict trade or the provision of any service or to endanger the continuity of supplies or services as provided for under Section 47 (2) (a) of the Competition Act, 2003.

- 3.4.8 The exclusive supply agreement between Afrisam Namibia Cement (Pty) Ltd and Ohorongo Cement (Pty) Ltd represents a potentially anti-competitive effect of an exclusive contract. This is characteristic of a clear case of a vertical foreclosure, where the agreement in the first instance represents an upstream manufacturing concern such as Ohorongo Cement (Pty) to enter with Afrisam Namibia Cement (Pty) Ltd, a dominant supplier into a exclusive contract with its inventory and pricing conditions to supply cement in Namibia. Commission resolved that this agreement is exclusive in the sense that it tends to ensure exclusivity to one supplier with the intended producer thus precluding other suppliers from dealing with Ohorongo Cement (Pty) Ltd albeit on preferential terms as set out in the agreement.
- 3.4.9 From a competition assessment point of view, the exclusive nature of the supply agreement is regarded as foreclosing level playing field to other competitors and thus distorts the spirit of competition in the relevant cement market in terms of its supply and pricing. The supply and pricing conditions outlined in the agreement has further relevance as to how it impacts the consumer in terms of competitive pricing and wider choice of cement to be offered to both Ohorongo Cement (Pty) Ltd and Afrisam Namibia Cement (Pty) Ltd.
- 3.4.10 Commission is of the considered view that the agreement upon which the proposed merger is based is structured on the basis that Afrisam is exiting the Namibian market purely as a registered supplier in Namibia, but not necessarily as a supplier of cement to the Namibian market. This means that Ohorongo Cement (Pty) Ltd is desirous of sourcing cement products from Afrisam (Pty) Ltd under this agreement by importing cement from South Africa and that Afrisam Namibia Cement (Pty) Ltd sales team will distribute the cement in Namibia and neighbouring regions on behalf of Ohorongo Cement (Pty). Commission views this proposed arrangement in effect as conditioning the supply and pricing of cement in the Namibian Market. Commission resolved therefore that this agreement is exclusive in nature and does give rise to possible vertical foreclosure of competitors and is anti-competitive.
- 3.4.11 The proposed merger is therefore prohibited on grounds that the supply agreement can potentially lead to the prevention or lessening of competition or restrict trade or the provision of any service or to endanger the continuity of supplies or services in the cement market as provided for under Section 47 (2) (a) of the Competition Act, 2003.

### **3.5 Conduct of Competition in Cement Market**

- 3.5.1 The Commission has regard to the conduct of competition in the cement market of the Namibian economy. The proposed merger has significant implications on the anti-competitive nature of the supply and pricing of cement in the Namibian Market. The prohibition of the merger rests on the premise of effective competition regulation where the cement industry needs

not only to maximise efficiency gains in terms of production and supply of cement, but it also ensures that production and supply processes yield the consumers with competitive prices with the greatest possible number of product choices and services of a better quality cement as provided for under Section 2 (b) of the Competition Act, 2003.

- 3.5.2 Commission states firmly that the Competition Act is comprehensive and the Commission to administer the Act is now fully operational. Commission has regard to Section 23 and 26 of the Act where industry players in the cement market are advised not to engage in any restrictive business practices which may contravene the provisions of the Act or abuse of dominance position. The restrictive business practices provisions of the Competition Act, 2003 are contained in Chapter 3 of the Act, where the agreements between undertakings, decisions by associations of undertakings or concerted practices by undertakings which have as their object or effect the prevention or substantial lessening of competition in trade in any goods or services in Namibia, or a part of Namibia are prohibited under two relevant Parts: *(i) Part I dealing with restrictive agreements, practices and decisions; and (ii) Part II dealing with abuse of dominant position.*
- 3.5.3 The prohibited restrictive business practices are spelt out fully in Section 23 and 26 of the Act which include agreements between undertakings to fix prices, engage in collusive tendering, set minimum resale prices or limit production. It covers both horizontal agreements between businesses that would normally compete for the supply of cement, and vertical agreements between manufacturers and suppliers and their customers. The Act also prohibits abuse of dominant position by an entity or group of entities.
- 3.5.4 Commission resolves that if any manufacturer or supplier of cement in the relevant market engages in restrictive practices that are prohibited for under Part I and II of Chapter 3 of the Competition Act, 2003, that such businesses will be liable for investigation and possible sanctioning under the Competition Act, 2003.

**L. MURORUA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

23 November 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 85

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE - VEDANTA RESOURCES Plc // ANGLOBASE  
NAMIBIA HOLDINGS (PTY) LIMITED  
CASE NO.: 2010JULY0036MER**

1. The Commission has received notification of the abovementioned proposed merger on **5 July 2010.**

2. Please note that the Commission has **approved the proposed merger with conditions.**
3. **The conditional approval of the proposed merger is subject to the following conditions:**
  - that the merger should allow for local participation in accordance with section 2(f) of the Competition Act, 2003 (Act No. 2 of 2003).
  - that the merger transaction is subject to full compliance with the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992).
4. **The reasons for the conditional approval of the proposed merger are as follows:**
  - That the proposed transaction is expected to change the current foreign shareholders of a Namibian mining company and replace them with new foreign shareholders without the participation of Namibians. This will have some waning effects on the economic development aspiration of the country, which aims at increasing participation of Namibians in terms of ownership in the main stream economy. Merging parties should therefore, ensure local participation in the transaction, in accordance with section 2(f) of the Competition Act, 2003, to promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.
  - Commission noted from the merging parties' submission that it is envisaged that the merger transaction will not have any (negative) impact on employment. Commission is cognizant that from the public interest point of view the proposed merger considers the operational issues raised by the trade unions concerned at the mine as important. These operational matters include, but not exclusive to the pension benefits and overtime payments of the workers. Commission views that these operational matters will be resolved amicably to the benefit of both the management and the employees concerned at the mine.
5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

23 November 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 86

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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



PROPOSED MERGER NOTICE – DURO PRESSINGS (PTY) LIMITED // WISPECO  
NAMIBIA (PTY) LIMITED  
CASE NO.: 2010JUNE0035MER

1. The Commission has received notification of the abovementioned proposed merger on **30 June 2010**.
2. Please note that the Commission has **approved the proposed merger with conditions**.
3. The **Commission's conditional approval** of the proposed merger is subject to the **following conditions**:
  - that the pre-emptive rights contained in the Shareholders Agreement of 2009 be reviewed based on the principle of allowing for equal treatment of shareholders; and
  - that the merger allows for the shares of Hettasch Investment Trust to be made available to partners on an equal treatment of affording such rights to shareholders concerned.
4. The reasons for the conditional approval of the proposed merger are stated below:
  - The evaluation of the transaction found that the merging parties have a historical association which is in the form of "pre-emptive rights". These rights give rise to a non-collusive type of agreements which results in compromising the principle of equal treatment of shareholders in a merger transaction. Commission is of the opinion that these types of agreements distort the spirit of competition from a business transaction point of view and it should be discouraged.
  - In terms of the merger determination criteria set out by section 47(2) of the Competition Act, 2003, the merger is likely to *result in Wispeco Namibia strengthening a dominant position in the market given its 45 percent market share in the manufacturing and supply of steel and aluminium products in the industry. Commission noted, however that the dominance per se is not bad, but its abuse. Commission advises the merging parties that the strengthening of the dominant position by the merged entity will thus not be considered anticompetitive unless the entity exercises the market power that it will get from that position. If it does, the Commission rules that it has the necessary powers under Chapter 3 of the Competition Act, 2003 to deal with abuse of dominance and that the post-merger situation will be monitored to avoid such possible occurrences.*
5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

27 September 2010

**NAMIBIAN COMPETITION COMMISSION**

No. 87

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE – LUBRICATION SPECIALISTS (PTY) LIMITED // PISCES  
INVESTMENT NO. 19 CC T/A QUALITEC  
CASE NO.: 2010JUNE0031MER**

1. The Commission has received notification of the abovementioned proposed merger on **21 June 2010**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's approval of the merger without conditions is based on grounds that there is no material evidence of anticompetitive nature. In terms of the merger determination criteria as set out in terms of section 47(2) of the Competition Act, 2003, the merger is not likely to prevent or lessen competition or restrict trade in Namibia given that there are no barriers to entry in the lube industry.
4. The evaluation of the transaction also found that there are no competition concerns from stakeholders, especially, the major competitors regarding the merger between Lubrication Specialists and Qualitec. The evaluation also found that parties made commitments to ensure that there will be no job losses as result of this merger. On the basis of the above findings, it is suggested that the Commission approves the merger without conditions.
5. 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.*

**L. MURORUA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

27 September 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 88

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

PROPOSED MERGER NOTICE - WALVIS BAY AIRPORT SERVICES (PTY) LIMITED  
// MANICA GROUP NAMIBIA (PTY)  
CASE NO.: 2010JUNE0033MER

1. The Commission has received notification of the abovementioned proposed merger on the **21st June 2010**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. Commission's approval of the merger without conditions is based on grounds that there is no material evidence of anticompetitive nature as a result of the transaction. In terms of the merger determination criteria as set out in terms of section 47(2) of the Competition Act, 2003, the merger is not likely to prevent or lessen competition or restrict trade in Namibia given that there are no barriers to entry in the provision of ground handling airport services in Namibia.
4. The evaluation of the transaction also found that there are no competition concerns from stakeholders, especially, the major competitors regarding the merger between Walvis Bay Airport Services (Pty) Ltd and Manica Group Namibia (Pty) Ltd. The evaluation also found that parties made commitments to ensure that there will be no job losses as result of this merger. Further, the merging parties have shown commitments as per their merger notice to invest in ground handling equipment at the Walvis Bay International Airport.
5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

27 September 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 89

2011

NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER

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

PROPOSED MERGER NOTICE – CIC HOLDINGS LIMITED //  
IMPERIAL HOLDINGS LIMITED  
CASE NO.: 2010AUG0043MER

1. The Commission has received notification of the abovementioned proposed merger on **8 August 2010**.
2. Please note that the Commission has **approved the proposed merger with conditions**.

3. **The conditional approval of the proposed merger is subject to the conditions listed below:**

- The merger should allow for meaningful local participation in accordance with section 2(f) of the Competition Act, 2003.
- The merger transaction should fully comply with the necessary regulations from the Ministry of Works and Transport that governs the transport logistical and distributorship services in Namibia.

4. **The reasons for the conditional approval of the proposed merger are as follows:**

- The proposed transaction has relevance for ownership implications in the sense that the transaction involves undertakings which are majority owned by foreign parties. Commission views this implication with concern as it is inconsistent with the enhancement of promoting and safeguarding competition in accordance with section 2(f) of the Competition Act, 2003, to promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons. Commission resolves that the merger transaction should allow for local participation at shareholding level to ensure ownership by Namibians.
- Commission has regard to the fact that the merging parties operate in different markets (the acquiring firm operates in the logistical services market, while the target firm operates in the distributorship services market). Commission is of a considered view that the structures of the relevant markets will not change or be altered as a result of the transaction, and thus the present market positions of the merging parties will not be affected.
- Commission however is concerned about the harmful effects the merger has on competition within the relevant markets, more particularly related to the sub-contracted smaller Namibian companies who are playing a concerted role on ensuring local trucking capacity in Namibia. Commission resolves that the merger transaction should not give rise to risk of markets becoming foreclosed to smaller competitors in the relevant sector. Commission aims to monitor on a post-merger basis the competitive conduct of the merger parties in order to ensure that it does not contravene the provisions in Part I and II of the Competition Act. In addition, the merger parties are further referred to Section 47(2) (f) of the Act in order to avoid any such competitive conduct.

5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

21 October 2010

**NAMIBIAN COMPETITION COMMISSION**

No. 90

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE – MAYIBUYE GROUP (PTY) LIMITED //  
BLUE FINANCIAL SERVICES LIMITED  
CASE NO.: 2010SEPT0045MER**

1. The Commission has received notification of the abovementioned proposed merger on **10 September 2010**.
2. Please note that the Commission has **approved the proposed merger with condition**.
3. **The conditional approval of the proposed merger is subject to the following condition:**
  - that the merger transaction should fully comply with the relevant regulatory requirements of NAMFISA.
4. 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.*

**L. MURORUA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

20 October 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 91

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE – AVUSA LIMITED // UNIVERSAL PRINT GROUP (PTY)  
LIMITED AND HIRT & CARTER (PTY) LIMITED  
CASE NO.: 2010JULY0041MER**

1. The Commission has received notification of the abovementioned proposed merger on **26 July 2010**.

2. Please note that the Commission has **approved the proposed merger with conditions.**
3. **The conditional approval of the proposed merger is subject to the conditions listed below:**
  - that the merging parties ensure the minority shareholding in the Van Schaik Bookstore Namibia (Pty) Ltd held by the Disability Benefit Trust, a welfare organisation that benefits disabled people in Namibia is maintained and should not be diluted.
  - that this being a retail business transaction, the approval of the Minister of Trade and Industry is required in terms of Section 3(4) of the Foreign Investment Act, 1990 (Act No. 27 of 1990).
4. The Commission's approval of the merger with conditions is based on the grounds that while the transaction does not give rise to any significant horizontal competition concerns in the retailing of academic books and printing industries in Namibia, there is potential that the transaction could adversely affect the minority shareholding in Van Schaik Bookstore Namibia (Pty) Limited held by the Disability Benefit Trust, a welfare organisation that benefits disabled people in Namibia. Commission views this as a public interest matter to safeguard the minority shareholder rights in the transaction.
5. In addition, Commission would like to ensure that the merging parties fully comply with the regulatory requirements of the Ministry of Trade and Industry, governing the in-bound foreign direct investment in the retail sector.
6. 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.*

**L. MURORUA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

20 October 2010

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NAMIBIAN COMPETITION COMMISSION

No. 92

2011

NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER

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

PROPOSED MERGER NOTICE – METROPOLITAN HOLDINGS LIMITED //  
MOMENTUM GROUP LIMITED  
CASE NO.: 2010APR0027MER

1. The Commission has received notification of the abovementioned proposed merger on **24 August 2010.**

2. Please note that the Commission has **conditionally approved the proposed merger**.
3. The conditional approval of the proposed merger is **subject to the conditions listed below**.
4. The Commission has approved the merger based on the following **condition**:
  - that the merger fully complies with the regulatory requirement of NAMFISA as set out in the following Acts:
    - (i) Long-Term Insurance Act, 1998 (Act No. 5 of 1998);
    - (ii) Investment of Funds Act, 1984 (Act No. 39 of 1984);
    - (iii) Unit Trust Control Act, 1981 (Act No. 54 of 1981);
    - (iv) Participation of Bonds Act, 1981 (Act No. 55 of 1981); and
    - (v) Stock Exchange Control Act, (Act No. 1 of 1985, as amended).
5. The **reasons** for conditional approval of the proposed merger are:
  - While the proposed transaction does not give rise to any significant horizontal competition concerns in the long-term insurance and investment products markets as well as the retirement fund administration services industry in Namibia, there are concerns that the transaction should fully comply with the relevant regulatory requirements.
  - The Commission still awaits the letter of assurance from the merging parties in terms of local participation, stating the commitments of the merging parties to comply with section 2(f) of the Competition Act, *to promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons*, as agreed at the last meeting with legal representatives of the merging parties.
6. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

20 October 2010

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**NAMIBIAN COMPETITION COMMISSION**

No. 93

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

**PROPOSED MERGER NOTICE -STARTING RIGHT INVESTMENTS  
ONE EIGHT FOUR (PTY) LIMITED // BP NAMIBIA (PTY) LIMITED  
CASE NO.: 2011JAN0056MER**

1. The Commission has received notification of the abovementioned proposed merger on **20 January 2011**.
2. Please note that the Commission has **approved the proposed merger with conditions**.
3. **The conditional approval of the proposed merger is subject to the conditions listed below:**
  - the merger should allow for local participation in accordance with section 2(f) of the Competition Act, 2003, in order to promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.
  - the merger should not give rise to synergy which may cause a merger-related loss of employment.
  - the merging parties should obtain confirmation from the Minister of Mines and Energy to ensure that BP Namibia's wholesale licence will remain valid following the change of name of BP Namibia upon completion of the transaction.
  - The merger should fully comply with the environmental impact assessment in accordance with the licence issued to BP Namibia.
4. **The reason for the conditional approval of the proposed merger is as follows:**
  - Commission is cognizance of the fact the transaction has not complied with the requirements of the Competition Act, 2003, especially, section 2(f) of the Act. Full compliance with the above provision of the Act is therefore necessary to achieve the objectives the Act.
  - In most instances, mergers results in some workers losing their jobs. With unemployment in the country already at a record high levels, Commission encourages that retrenchments relating to the transaction should be minimized.
  - The Minerals (Prospecting and Mining Act) Act 33 of 1992 regulates the operations of mining and prospecting activities. Commission therefore expects the merging parties to fully comply with the above Act and related regulatory requirements from the Ministry of Mines and Energy.
  - Merging parties are known for causing environmental damages in the United States and Ivory Coast. Commission encourages that there should be no damages to the environment in Namibia as result of the merger.
5. 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.*



**NAMIBIAN COMPETITION COMMISSION**

No. 94

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

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

PROPOSED MERGER NOTICE – URAMIN NAMIBIA (PTY) LIMITED T/A AREVA  
RESOURCES NAMIBIA // ERONGO DESALINATION COMPANY (PTY) LIMITED  
CASE NO.: 2010NOV0051MER

1. The Commission has received notification of the abovementioned proposed merger on **12 November 2010**.
2. Please note that the Commission has **approved the proposed merger with conditions**.
3. **The conditional approval of the proposed merger is subject to the conditions listed below:**
  - the merging should obtain a permit/licence from the Ministry of Agriculture, Water and Forestry to enable them to supply bulk water.
  - the merger parties should ensure that the quality of water from the desalination plant is fully compliant to the Namwater model of quality for bulk water supply and not to compromise it.
  - the water tariffs to be charged by the merging parties should be based on the outcome of the negotiations between Namwater, the Ministry of Agriculture, Water and Forestry and the merging parties. The outcome of the negotiations should ensure that public interest is protected with regard to the pricing of bulk water supply from the desalination plant.
4. **The reasons for the conditional approval of the proposed merger is as follows:**
  - By virtue of Article 144 of the Namibian Constitution, Namibia acceded to the 1982 United Nations Convention (“the Convention”) on the Law of the Sea. This Convention defines the territorial waters, or territorial sea as “public water” and “not private water”, which is a belt of coastal waters extending at most 12 nautical miles from the baseline of a coastal state. In terms of the Convention the territorial sea is regarded as the sovereign territory of the state over which the state has jurisdiction to regulate the use of sea water. It is therefore, in accordance with Article 144 of the Namibian Constitution that a permit from the Ministry of Agriculture, Water and Forestry is required for the purpose of this merger which involves the supply of desalinated sea water.
  - It is understood from Namwater that the water to be obtained from the desalination plant will be supplied to mines in Erongo Region as well as the communities of Arandis, Swakopmund and Walvis Bay. To that effect, it is absolutely necessary that such water meets the highest standard of quality for human consumption, hence, it is of paramount importance that the Namwater model of quality for bulk water supply should be maintained.

- Bulk water supply sector in Namibia is a sensitively regulated sector. For that reason, any tariff to be imposed on bulk water supply should be agreed upon by the regulator as well as the authorized sector player.
5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

9 February 2011

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**NAMIBIAN COMPETITION COMMISSION**

No. 95

2011

NOTICE OF DETERMINATION MADE BY COMMISSION  
 IN RELATION TO PROPOSED MERGER

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

PROPOSED MERGER NOTICE – AUAS MOTORS (PTY) LIMITED // PUPKEWITZ  
 GENERAL MOTORS FRANCHISES SWAKOPMUND & WALVIS BAY  
 CASE NO.: 2010SEPT0048MER

1. The Commission has received notification of the abovementioned proposed merger on **22 November 2010**.
2. Please note that the Commission has **approved the proposed merger with conditions**.
3. **The conditional approval of the proposed merger is subject to the conditions listed below:**
  - the merger should allow for enhanced local participation of historically disadvantaged persons in accordance with section 2(f) of the Competition Act, 2003, *in order to promote a greater spread of ownership, in particular to increase ownership of historically disadvantaged persons.*
  - the Distributor Model being proposed for implementation in Namibia should not be exclusive in nature that it only allow for the appointment of one distributor in the country as that is tantamount to market allocation for the distribution of General Motors vehicles in Namibia.
  - the merging parties should not contravene Part I and Part II of the Competition Act, 2003, as result of the implementation of the merger. If such contravention occurs, Commission will have recourse to the Act in order to address such contraventions.

4. **The reasons for the conditional approval of the proposed merger are as follows:**
- Commission has regards to the purpose of the Competition Act, 2003, and would like to encourage for the attainment of the objectives of the Act, especially, to give effect to section 2(f) of the Act.
  - Allowing for the Distributor Model to be implemented in Namibia is highly an exception from the perspective of the Commission because of its potential to give rise to market allocation which is prohibited in terms of the Act. Commission would like to get an assurance in writing from GMSA that it does not intend to appoint Auas Motors as a sole distributor of GM vehicles in Namibia but that GMSA is free to appoint other distributors in Namibia. Such an assurance from GMSA should put to rest the element of exclusivity in the Distributor Model.
5. 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.*

**L. MURORUA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

9 February 2011

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NAMIBIAN COMPETITION COMMISSION

No. 96

2011

NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER

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

PROPOSED MERGER NOTICE – METROPOLITAN LIFE NAMIBIA LIMITED //  
METHEALTH NAMIBIA ADMINISTRATORS (PTY) LIMITED  
CASE NO.: 2010DEC0053MER

1. The Commission has received notification of the abovementioned proposed merger on **13 December 2010**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's approval of the merger without conditions is based on grounds that there is no material evidence of anti-competitive nature. In terms of the merger determination criteria as set out in section 47(2) of the Competition Act, 2003, the merger is not likely *to prevent or lessen competition or restrict trade* in Namibia. This is because there are no barriers to entry in the healthcare services industry being provided through medical aid fund administration services and managed healthcare services.

4. The evaluation of the transaction also found that the merger will not give rise to any significant competition concerns as no such concerns were expressed by stakeholders, especially, the major competitors regarding the acquisition of a controlling stake in Methealth by Metropolitan. The evaluation also found that in terms of public interest, merging parties made commitments to ensure that there will be no job losses as a result of the merger.
5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

9 February 2011

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**NAMIBIAN COMPETITION COMMISSION**

No. 97

2011

**NOTICE OF DETERMINATION MADE BY COMMISSION  
IN RELATION TO PROPOSED MERGER**

Competition Act, 2003 (Act 2 of 2003)  
(Section 47(7), Rule 30)

**PROPOSED MERGER NOTICE - OTJOZONDU HOLDINGS (PTY) LIMITED //  
SHAW RIVER RESOURCES LIMITED  
CASE NO.: 2011JAN0055MER**

1. The Commission has received notification of the abovementioned proposed merger on **17 January 2011.**
2. Please note that the Commission has **approved the proposed merger with conditions.**
3. **The conditional approval of the proposed merger is subject to the conditions listed below:**
  - the merger should not give rise to synergy which may cause merger-related retrenchments of the existing employees at Otjozonde Mine.
  - the merger should fully comply with all the requirements of the Minerals (Prospecting and Mining) Act, 1992 (Act No.33 of 1992) and any other regulatory requirements of the Ministry of Mines and Energy in relation to this transaction.
4. **The reasons for the conditional approval of the proposed merger are as follows:**
  - In most instances, mergers results in some workers losing their jobs. Commission encourages that retrenchments relating to this transaction be minimized so as not exacerbate the already unacceptable unemployment situation in the country.

- Commission expects the merging parties to fully comply with the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) and related regulatory requirements.
5. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

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No. 98

2011

NOTICE OF DETERMINATION MADE BY COMMISSION  
 IN RELATION TO PROPOSED MERGER

Competition Act, 2003 (Act 2 of 2003)  
 (Section 47(7), Rule 30)

MWEB NAMIBIA (PTY) LTD // AFRICA ONLINE (PTY) LTD  
 CASE NO.: 2010JAN0023MER

1. The Commission has received notification of the abovementioned proposed merger on **25 February**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The **evaluation** of the transaction found that from the information analysis assessed above, it is concluded that both of the merging parties are engaged in the provision of internet services in Namibia. The transaction can therefore be classified as a horizontal merger, i.e., between undertakings that produce and sell the same products or services (or between competing firms).

Commission note that of the three common types of mergers (the other two being vertical mergers and conglomerate mergers) horizontal mergers are considered the most harmful to competition by the mere fact that they reduce the number of competing undertakings in the relevant market, and increase the level of concentration in the market.

Commission further note the major concern is in the merging parties' provision of Dial-Up services in which they would have a post-merger combined market share of 52%, which would give the merged entity a dominant position thus acquiring a dominant position in the market. Commission notes that dominance *per se* is not bad, but its abuse. Commission ruled that the acquisition of the dominant position by the merged entity will not be considered anti-competitive, unless the entity exercises the market power that contravenes the provisions in accordance to Chapter 3 of the Competition Act, 2003 that deals with abuse of dominance

and Regulation 36 of the Commencement of the Competition Act, 2008 that defines the criteria for dominance. Commission ruled to monitor the post merger situation in order to avoid such possible occurrences.

In the Digicon/VPN services sector of the relevant market, Commission notes that the proposed merger is insignificant as to raise serious competition concerns as it will result in the merged entity having a market share of 8% which will certainly not give the merged entity a dominant position in the market, which further has other larger players with much higher market shares in the concerned sector.

4. 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.*

**L. MURORUA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

26 April 2010

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