



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## General Notices

### NAMIBIAN COMPETITION COMMISSION

No. 523

2013

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: COLAS SOUTH AFRICA (PTY) LTD // ROADS CONTRACTOR COMPANY LTD  
// GUINEA FOWL INVESTMENTS SEVENTEEN (PTY) LTD  
CASE NO.: 2013JULY0033MER

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

1. The Commission received notification of the abovementioned proposed merger on **22 July 2013**.

2. Please note that the Commission has **declined to give approval for the implementation of the proposed merger.**
3. **The reasons for the Commission to decline to give approval for the implementation of the proposed merger are the following:**

### **3.1. Background**

- 3.1.1. The proposed merger entails both Colas South Africa (Pty) Ltd and Roads Contractor Company Ltd (“RCC”) acquiring equal shareholding in Guinea Fowl Investments, which will be renamed Oryx Surfacing (Pty) Ltd. The proposed transaction will entail merging parties transferring their road surfacing businesses and leasing and/or transferring their road surfacing assets to Oryx Surfacing (Pty) Ltd. Colas South Africa is a wholly owned subsidiary of Colas S.A, a company registered in France. RCC is wholly owned by the Government of the Republic of Namibia, as represented by the Ministry of Works and Transport.

### **3.2. Relevant Market**

- 3.2.1. The relevant product market was identified as that of road surfacing and the relevant geographical market was identified as national, being within Namibia.
- 3.2.2. Although the identified product market was that of road surfacing, there exists an important link between the downstream road surfacing market and its upstream bituminous products supply market. Given that the proposed merger is also likely to have an effect on the upstream market (specifically regarding the supply of bitumen and bituminous binders and the possible foreclosure of the only competitor to Colas Namibia), special focus was also paid to the upstream market.

### **3.3. Relevant Provisions of the Act**

- 3.3.1. In making a determination in relation to a proposed merger, the 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. Commission’s 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 understand the nature of the road surfacing market in Namibia. The road surfacing market is a bidding market with different contractors taking part in the bidding process. An important input into road surfacing is bitumen. The upstream bituminous products market (which has an important link to the downstream road surfacing market) consists of two suppliers, Colas Namibia (a wholly owned subsidiary of Colas South Africa) with a significant market share and Tosas Namibia with a much smaller market share.
- 3.4.2. *The road surfacing market:* RCC is currently being awarded work by the Roads Authority (“RA”) on a negotiated basis in terms of a Memorandum of Agreement (“MOA”) entered into between the parties. Even though the current MOA is expected to end in March 2014 and the merging parties

submit that it will not be re-entered into, the agreement has continually been extended for the past 10 years (which was initially only suppose to last for three years after the formation of RCC). There is, therefore, no guarantee that it will be terminated end of March 2014 or, even if it is terminated, that the awarding of work to RCC by RA on a negotiated basis will cease after the expiration of the MOA. It is unlikely that RCC will be tendering competitively for any road surfacing works thereafter.

- 3.4.3. RCC, having a joint controlling interest in Oryx Surfacing, would be in a position to tender for more road construction and maintenance contracts and will no longer be dependent on external subcontractors for road surfacing works.
- 3.4.4. Given the relationship between RCC and RA and the capacity that the proposed joint venture entity, Oryx Surfacing will acquire, RCC is likely to secure more tenders from RA and subcontract them to Oryx Surfacing. Further, given the joint shareholding of Colas South Africa and RCC in Oryx Surfacing, Colas Namibia is likely to supply bituminous binders to Oryx Surfacing at cheaper prices than it charges competitors.
- 3.4.5. The proposed merger is, therefore, likely to limit the possibility of other contractors in the downstream market for road surfacing from being in a position to win tenders. As such the proposed merger is likely to prevent and lessen competition in the road surfacing market.
- 3.4.6. *The bituminous products market:* Given the nature of the upstream market and the fact that there are only two suppliers in this market, the proposed merger is likely to lead to the market being foreclosed for other competitor. Tosas Namibia, the only competitor to Colas Namibia, is likely to lose its existing customer RCC. This is likely to result in Tosas Namibia exiting the Namibian market, thus leaving customers entirely dependent on Colas Namibia as the only supplier of bituminous products in Namibia.
- 3.4.7 Following the investigation of the proposed merger and in terms of the criteria listed in section 47(2) of the Act, **the proposed merger is declined for the following reasons:**

3.1.7.1 The proposed merger raises competition concerns for the following reasons:

Regarding section 47 (2) (a) of the Act:

- 1) The implementation of the proposed merger is likely to prevent competition in the upstream bituminous binders supply market, which has a direct effect on the downstream road surfacing market. Post merger, Tosas Namibia is likely to exit the market, which will result in a monopoly situation being created which is likely to result in increased prices.
- 2) Given the relationship between RCC and RA, the capacity that Oryx Surfacing will acquire and the fact that Colas Namibia is likely to supply bituminous binders more cheaply to Oryx Surfacing than its competitors, the Commission finds that the proposed merger is likely to result in the prevention and lessening of competition in the downstream road surfacing market.

- 3) Given that the proposed merger is likely to result in the foreclosure of Tosas Namibia, the only competitor of Colas South Africa, the Commission finds that the proposed merger is likely to restrict trade in the relevant market for the supply of bituminous products as the likely foreclosure of the only competitor will result in Colas Namibia being the only supplier of these products in the market.
- 4) The implementation of the proposed transaction is likely to result in the merged firms having the ability to exercise market power in the upstream bituminous binders supply market that has an important link with the downstream road surfacing market, which will consequently lead to foreclosure of rivals or raise their costs in a way that harms consumer welfare in the downstream road surfacing market.

3.4.7.2 Regarding section 47 (2) (b) of the Act, the implementation of the proposed merger is likely to result in Colas Namibia strengthening its dominant position in the upstream market for the supply of bituminous products. As mentioned above, post merger, RCC is likely to secure more road construction and maintenance tenders from RA and will subcontract Oryx Surfacing to do the road surfacing. Further, given the joint shareholding of Colas South Africa and RCC in Oryx Surfacing, Colas Namibia is likely to supply bituminous binders to Oryx Surfacing at cheaper prices than it charges competitors. As a result, Tosas Namibia is likely to lose an important customer in RCC and to exit the market. If Tosas exists the market customers will be entirely dependent on Colas Namibia as the only supplier of bituminous products in Namibia.

3.4.7.3 Regarding section 47 (2) (c) of the Act, the proposed merger is not likely to result in a benefit to the public which would outweigh any detriment that will likely be caused by the implementation of the proposed merger.

**F. HANGULA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

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**NAMIBIAN COMPETITION COMMISSION**

No. 524

2013

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: FEDEX EXPRESS (NAMIBIA) PROPRIETARY LIMITED (“FEDEX NAMIBIA”)  
// SUPASWIFT EXPRESS SERVICES (NAMIBIA) (PTY) LTD  
CASE NO.: 2013OCT0051MER

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

1. The Commission received notification of the abovementioned proposed merger on the **28 October 2013**.
2. Please note that the Commission has **approved the proposed merger without conditions**.

3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if-
  - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
  - (b) *Any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**F. HANGULA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

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**NAMIBIAN COMPETITION COMMISSION**

No. 525

2013

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: ERASTUS SHIKONGO SHAPUMBA // HARTEBEEST PROPERTIES CC  
CASE NO.: 2013OCT0048MER**

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

1. The Commission received notification of the abovementioned proposed merger on **14 November 2013**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if-
  - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
  - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**F. HANGULA  
CHAIRPERSON  
NAMIBIAN COMPETITION COMMISSION**

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**NAMIBIAN COMPETITION COMMISSION**

No. 526

2013

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: NAMIBIA BREWERIES LIMITED // CAMELTHORN BREWING COMPANY  
(PTY) LTD  
CASE NO.: 2013NOV0052MER

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

1. The Commission received notification of the abovementioned proposed merger on **15 November 2013**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if-
  - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
  - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**F. HANGULA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

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**NAMIBIAN COMPETITION COMMISSION**

No. 527

2013

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: PINKS FAMILY OUTFITTERS (PTY) LTD // WOOLWORTHS  
NAMIBIA (PTY) LTD  
CASE NO.: 2013OCT0050MER

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

1. The Commission received notification of the abovementioned proposed merger on **28 October 2013**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on grounds that the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.

4. Note that the Commission has the authority in terms of section 48(1) of the Act to revoke a decision approving the implementation of a proposed merger if-
- (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
  - (b) *Any condition attached to the approval of the merger that is material to the implementation is not complied with.*

**F. HANGULA**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

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