



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GENERAL NOTICES

No. 335	Namibian Competition Commission: Notice of determination made by Commission in relation to proposed merger: Momentum Short Term Insurance (Namibia) Ltd // Alexander Forbes Insurance Company Namibia Ltd)	1
No. 336	Namibian Competition Commission: Notice of determination made by Commission in relation to proposed merger: West China Cement Limited // Schwenk Namibia Pty Ltd	
No. 337	Namibian Competition Commission: Notice of determination made by Commission in relation to proposed merger: The Expanded Infrastructure Fund Trust // Aloe Investments Number Twenty-Seven (Pty) Ltd	
No. 338	Namibian Competition Commission: Notice of determination made by Commission in relation to proposed merger: Cymot Investment (Pty) Ltd // Alert Engine Parts (Pty) Ltd	
No. 339	Namibian Competition Commission: Notice of determination made by Commission in relation to proposed merger: M & M Trust // Tyrepro Namibia (Pty) Ltd	

General Notices

NAMIBIAN COMPETITION COMMISSION

No. 335

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED
MERGER: MOMENTUM SHORT TERM INSURANCE (NAMIBIA) LTD // ALEXANDER
FORBES INSURANCE COMPANY NAMIBIA LTD
CASE NO.: 2020JUN0016MER

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 July 2020**.
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 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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 336

2020

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: WEST CHINA CEMENT LIMITED // SCHWENK NAMIBIA PTY LTD
(CASE NO.:2020JAN0002MER)

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 **17 January 2020**.
2. Please note that the Commission has prohibited the proposed merger.
3. The reasons for the prohibition of the proposed merger are as follows:

- 3.1 The relevant market is highly concentrated with only two players with insignificant import competition, the aforesaid coupled with the links/relationships between Whale Rock Pty Ltd and the acquiring group is likely to substantially lessen or prevent competition in the relevant market as contemplated in section 47(2)(a) of the Act.
- 3.2 The implementation of the proposed merger is highly likely to lead to the acquisition and strengthening of a dominant position in the relevant market, as contemplated in section 47(2)(b) of the Act.
- 3.3 There were no concrete benefits that would outweigh the detrimental effects that will result from the implementation of the proposed merger as contemplated in section 47(2)(c) of the Act.
- 3.4 Barriers to entry in the relevant market are high and it is not likely that a small undertaking, in particular small undertakings owned or controlled by historically disadvantaged persons, to gain access to or be competitive in the relevant market as contemplated in section 47(2)(f) of the Act.

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 337

2020

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: THE EXPANDED INFRASTRUCTURE FUND TRUST // ALOE
INVESTMENTS NUMBER TWENTY-SEVEN (PTY) LTD
CASE NO.: 2020JUN0015MER**

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 **12 June 2020**.
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.*

**P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 338

2020

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO
PROPOSED MERGER NOTICE: CYMOT INVESTMENT (PTY) LTD // ALERT
ENGINE PARTS (PTY) LTD
(CASE NO.: 2020JUN0020MER)**

Competition Act, 2003 (Act No. 2 of 2003)

1. The Commission has received notification of the abovementioned proposed merger on the **2 of July 2020.**
2. Please note that the Commission has **approved the proposed merger subject to the following condition:**
 1. *Following implementation, there shall be no retrenchment of the employees of Alert Engine Parts Namibia (Pty) Ltd ("Alert"), below management level as a result of the merger from the date of the implementation of the merger.*
 2. *For the sake of clarity retrenchments do not include:*
 - 2.1 *voluntary separation, resignation, or voluntary early retirement ("voluntary separations");*
 - 2.2 *transfer of employees from Alert to any subsidiary directly or indirectly controlled by Cymot Investments (Pty) Ltd or any Cymot branch and vice versa.*
 3. *The employees of Alert or Cymot shall be transferred or appointed on terms and conditions of employment that are on the whole not less favorable prior to implementation of the merger.*

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS
Non-merger specific retrenchments

4. *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. Such notification shall include, but is not limited to:*
 - a) *a list of employees likely to be affected by non-merger specific retrenchments;*
 - b) *the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;*
 - c) *an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);*
 - d) *a description of the steps taken by Cymot to avoid the non-merger specific retrenchments; and*
 - e) *the intended date of the non-merger specific retrenchments.*

Reporting obligations

5. *In order for the Commission to monitor compliance with the conditions, as set out in paragraph 1 and 3 above, provide the Commission with reports on the following dates:*
 - a) *As at the date of the implementation of the transaction (initial report); and*
 - b) *Thereafter on a bi-annual basis, starting 31st of January 2021, with subsequent compliance until the expiry of the conditions imposed.*

6. *The merger compliance reports must include but is not limited to the following information:*
 - a) *Regarding employment;*
 - i. *a list of all the employees as at the date of the report which includes their full names, positions and relevant department or division, job grades and remuneration;*
 - ii. *copies of the existing (pre-proposed transaction) employment contracts for each different job grade and different position indicating the terms and conditions of employment. Where employment contracts are concluded verbally these must be reduced to writing and where the terms and conditions of employment are not contained in the employment contracts, Cymot must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the first report);*
 - iii. *copies of the new employment contracts, under which the employees of Alert are employed, 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, Cymot must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the first report);*
 - iv. *a list of the employees who have left the employment of Alert and Cymot from the time that the merger was approved or since the period covered by the most recent merger compliance report submitted to the Commission;*
 - v. *the reasons for the retrenchments; and*
 - vi. *Any additional information that may be required by the Commission to monitor compliance with the Condition.*

b) *Definitions*

“Commission” means the Namibian Competition Commission;

“Competition Act” means Competition Act 2 of 2003;

“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);

“terms and conditions” in relation to employment contracts means any term and/or condition agreed upon between employer and employee relating to, among others, employee duties and responsibilities, work days, working hours, leave days, sick leave, remuneration, benefits such as pension and medical aid schemes or contributions thereto.

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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 339

2020

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: M & M TRUST // TYREPRO NAMIBIA (PTY) LTD
CASE NO: 2020JUL00118MER**

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 **8 July 2020**.
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.*

P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION
