



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 515

2022

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
THE PROPOSED MERGER: ALLENJI TRADING ENTERPRISES PROPRIETARY
LIMITED // ELAO - SIXTY CC T/A OKAHANDJA SPAR

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

1. The Commission has received notification of the abovementioned proposed merger on **6 July 2022**.
2. Please note that the Commission has **approved the proposed merger with conditions**.
3. The Commission's decision is based on grounds that although the proposed transaction is unlikely to result in the prevention or substantial lessening of competition or in any undertaking acquiring or strengthening a dominant position, it gives rise to public interest concerns, in particular employment, as envisaged by section 47(2) of the Competition Act, 2003. In order to safeguard employment of the employees of the primary target undertaking, the Commission approves the proposed merger subject to the following condition:
 - 3.1 All current employees of the business of Elao Sixty-Eight CC t/a Okahandja Spar ("Elao") shall be transferred and employed by Allenji Trading Enterprises (Pty) Ltd ("Allenji") or its nominee.
 - 3.2 The Transferred Employees of the business of Elao Sixty-Eight CC t/a Okahandja Spar ("Elao") shall be employed on terms and conditions of employment that are on the whole not less favorable to them than their existing terms and conditions of employment.
 - 3.3 The merged undertaking shall not retrench any of the transferred employees as a result of the merger for a period of three (3) years from the date of the approval of the merger.
 - 3.3.1 For the sake of clarity retrenchments do not include:
 - 3.3.1.1 voluntary separation, resignation and voluntary early retirement ("voluntary separations").

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS

Merger specific retrenchments

1. In the event that the merged undertakings identify any potential merger specific retrenchments, it will request the Commission's agreement to these merger specific retrenchments by way of written correspondence at least one month before these retrenchments are due to be effected. The merged undertakings' written correspondence must include, but shall not necessarily be limited to:

- 1.1 a list of employees likely to be affected by the merger specific retrenchments;
 - 1.2 the number and categories of employees likely to be affected by the merger specific retrenchments, as well as their job titles;
 - 1.3 the reasons for the retrenchments;
 - 1.4 a description of the steps taken by the merged undertakings to avoid the merger specific retrenchments; and
 - 1.5 the intended date of the merger specific retrenchments.
2. The Commission must within 10 business days of receipt of the correspondence referred to in paragraph 4 above indicate to the merged undertaking whether:
 - 2.1 it agrees to the merger specific retrenchments;
 - 2.2 does not agree to the merger specific retrenchments; or
 - 2.3 it requires further information from the merged undertaking prior to giving its consent.
3. In the event that the Commission requires further information it will, within 10 business days of receiving the aforementioned additional information, indicate in writing to the merged undertaking whether it agrees to or does not agree to these retrenchments.

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. The merged undertakings correspondence must include, but is not limited to:
 - 4.1 a list of employees likely to be affected by non-merger specific retrenchments;
 - 4.2 the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;
 - 4.3 an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);
 - 4.4 a description of the steps taken by the merged undertakings to avoid the non-merger specific retrenchments; and
 - 4.5 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, the merged undertaking must provide the Commission with reports on the following dates:
 - 5.1 31 September 2022, for the status as at the date of the implementation of the transaction (initial report);

- 5.2 Thereafter on a bi-annual basis, starting 31st of January 2023, 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:
- 6.1 Regarding employment.
- 6.1.1 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.
- 6.1.2 copies of the existing (pre-proposed transaction) employment contracts for each different job grade and different position indicating the terms and conditions of employment. Where employment contracts are concluded verbally these must be reduced to writing and where the terms and conditions of employment are not contained in the employment contracts, the merged undertaking must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the initial report);
- 6.1.3 copies of the new employment contracts, under which the employees of the target undertaking are employed with the merged undertaking, for each different job grade and different position indicating the terms and conditions of employment. Where employment contracts are concluded verbally, these must be reduced to writing and where the terms and conditions of employment are not contained in the employment contracts, the merged undertaking must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the initial report);
- 6.1.4 a list of the employees who have left the employment of the merged undertaking from the time that the merger was approved or since the period covered by the most recent merger compliance report submitted to the Commission;
- 6.1.5 the reasons for the retrenchments; and
- 6.1.6 Any additional information that may be required by the Commission to monitor compliance with the Condition.

Definitions

“Commission” means the Namibian Competition Commission;

“Competition Act” means Competition Act, 2003 (Act No. 2 of 2003);

“Merged undertaking” means collectively the business of Allenji Trading Enterprises (Pty) Ltd (“Allenji”) or its nominee, subsequent to the merger;

“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;

“Transferred Employees” means the persons employed by the Seller in the Business whose particulars (as at the signature date) are listed in the Agreement for the Sale of Assets.

**P. CARLSON
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

Authorised signature:

Date:

NAMIBIAN COMPETITION COMMISSION

No. 516

2022

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION
TO THE PROPOSED MERGER: SAS SHIPPING AGENCIES SERVICES
SARL// BOLLORE' AFRICA LOGISTICS SAS**

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 **23 June 2022**.
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**

Authorised signature:

Date:

NAMIBIAN COMPETITION COMMISSION

No. 517

2022

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
THE PROPOSED MERGER: MR. PRICE GROUP LIMITED// BLUE FALCON 188
TRADING PROPRIETARY LIMITED T/A STUDIO 88 GROUP**

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 **25 April 2022**.
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

Authorised signature:**Date:**

NAMIBIAN COMPETITION COMMISSION

No. 518

2022

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: EPIC PROPERTIES LTD // BH STEEL MANUFACTURING PTY LTD**

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 **20 May 2022**.

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

Authorised signature:

Date:

NAMIBIAN COMPETITION COMMISSION

No. 519

2022

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN
RELATION TO THE PROPOSED MERGER: FIRSTRAND NAMIBIA
LIMITED // OUTSURANCE INSURANCE COMPANY NAMIBIA LIMITED**

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

1. The Commission has received notification of the abovementioned proposed merger on **6 May 2022.**
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

Authorised signature:



Date:



NAMIBIAN COMPETITION COMMISSION

No. 520

2022

**NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION
TO THE PROPOSED MERGER: HEINEKEN INTERNATIONAL BV// NBL
INVESTMENT LIMITED AND DISTELL GROUP HOLDINGS LIMITED**

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

1. The Commission has received notification of the abovementioned proposed merger on **1 February 2022**.
2. Please note that the Commission has **approved the proposed merger with the following conditions:**

2.1 Employment

- 2.1.1 The Commission noted, due to the similarity in the operations of the Merged Entity, the merger may result in a duplication of functions of the employees, therefore, the Commission imposes an employment condition.
- 2.1.2 Following implementation, there shall be no retrenchments of employees below management level of the Merged Entity in Namibia as a result of the merger for a period of 5 years from the Closing Date.
- 2.1.3 For the sake of clarity retrenchments do not include:
 - 2.1.3.1 voluntary separation, resignation and voluntary early retirement (“voluntary separations”);
 - 2.1.3.2 retrenchments which are not merger specific or related including that which may be required in the normal course of business through changes in market dynamics and/or the broader economy;
 - 2.1.3.3 below management level retrenchments which are merger specific but agreed to with the Commission in writing after the date of approval of the merger (“merger specific retrenchments”).

- 2.1.4 The employees of the Merged Entity will be employed on terms and conditions of employment that are on the whole not less favourable to them than the terms and conditions of employment that prevailed prior to the implementation of the transaction.

2.2 Access to Chilled Space

- 2.2.1 The Commission noted an existing NBL policy on Chilled Space that limited participation of Namibian-owned and Namibian-controlled undertakings in the allocation of Chilled Space. The Commission further noted that due to the market share and/or market power that the Merged Entity will possess, a likelihood of this policy being enforced will likely deter or limit entry of Namibian-owned and Namibian-controlled undertakings in the relevant market. As a result of these concerns the Commission imposes a condition on access to Chilled Space.
- 2.2.2 The Merged Entity shall ensure that retailers shall be free to allocate up to 10% of Chilled Space in each beverage cooler owned by NBL or Distell Namibia in any on and off-consumption Outlet in Namibia. This allocation right shall apply only to products manufactured or packaged in Namibia by Namibian-owned and Namibian-controlled undertakings. This condition shall apply for a period of 5 years from the Closing Date, and the terms of this condition shall apply notwithstanding any conflict with any provision in an agreement between the retailer and the Merged Entity. The existing NBL Commercial Policy, specifically clause 6.8 in the said NBL Commercial Policy must be amended within three months of Closing Date to reflect this condition. A copy of the revised Commercial Policy is to be submitted to the Commission within four months of Closing Date. The Merged Entity shall educate its employees and inform the market of the new changes to its Commercial Policy through a notice.
- 2.2.3 The condition in 2.2.2 shall not apply to unique events, teams or stadiums sponsored by the Merged Entity, for the duration of such sponsorship(s).
- 2.2.4 The Merged Entity shall within 6 months after the Closing Date submit to the Commission a revised Commercial Policy on Chilled Space incorporating the contents as contemplated under paragraph 2.2.2.
- 2.2.5 The Merged Entity shall within 6 months provide notice to all customers and potential customers of the change in the Commercial Policy on Chilled Space.

2.3 Divestiture Remedy

- 2.3.1 The Commission noted an overlap in the FAB category in respect of the Merged Entity, as such, in order to remove the said overlap, the parties proposed the remedy that follows hereunder and the Commission imposes the said remedy as a condition as follows:
- 2.3.2 Within 1 (one) year of the Closing Date, the Merged Entity will license the rights to produce, market, distribute and sell Heineken's Strongbow brand in the Territory, to a Purchaser.
- 2.3.3 The divestiture of the Strongbow brand will take the form of a perpetual, royalty-free license for the use of the Strongbow brand in the Territory.

- 2.3.4 The Merged Entity shall do the following in respect of the divested business:
- 2.3.4.1. manage Strongbow in the ordinary course of business with reasonable care and skill, pursuant to good commercial practices and in accordance with a Transitional Services Agreement to be agreed with the licensee, in order to preserve and maintain the economic and competitive value of Strongbow until the date of disposal;
 - 2.3.4.2. provide sufficient resources for the maintenance of Strongbow, including implementing appropriate ongoing promotion and advertising in accordance with any current approved strategic business plan and current promotion and advertising or expenditure budget for Strongbow, until the date of disposal; and
 - 2.3.4.3. to the extent required by the licensee under a Transitional Services Agreement, provide services relating to the production, marketing, distribution and sale of Strongbow in the Territory. The Transitional Services Agreement would specify the duration of each transitional service being supplied, with none of the services being provided for more than 36 months.
- 2.3.5 To the extent that the transfer of the Strongbow brand to a licensee constitutes a notifiable merger in Namibia, such transaction shall be notified to the Commission in accordance with the requirements of the Competition Act, at which time the divestiture period in 2.3.1. shall, if applicable, be suspended pending the approval of the proposed transaction by the Commission.
- 2.3.6 The Merged Entity must not engage in any activity that could reduce the value of Strongbow, hinder its sales, render it an ineffective competitive product other than activities which amount to competition in the ordinary course of business. Strongbow must be divested to an entity that does not have any relationship with the Acquiring Group and its subsidiaries.

2.4 Local Manufacturing

- 2.4.1 The Merged Entity made undertakings in respect of local manufacturing; the Commission, therefore, imposes the following condition in respect of local manufacturing:
- 2.4.2 The Merged Entity shall establish a significant proportion of Distell's current production in South Africa for products supplied in Namibia, backed by significant investment in existing and new production capacity at NBL's facilities. This will include:
- 2.4.2.1 up to 50,000 HL of Distell's production and packaging of Hunters and Savanna brands from South Africa to Namibia within approximately 2 (two) years of the Closing Date; and
 - 2.4.2.2 up to 200,000 HL of Distell's packaging of (a) selected wine brand(s) from South Africa to Namibia within approximately 3 (three) years of the Closing Date.

2.5 Local Sourcing

- 2.5.1 The Commission noted that the Merged Entity procures certain products and services locally, due to Heineken and Distell being foreign owned-controlled undertakings the Commission is concerned that the said products or services may be sourced from abroad. In order to ensure the said locally sourcing continues post-merger, the Commission imposes the following conditions in respect of local sourcing:
- 2.5.2 The Merged Entity in respect of Input Products sourced locally pre-merger and having regard to existing agreements shall continue sourcing the referenced Input Products locally.
- 2.5.3 The Merged Entity shall continue sourcing services procured from Namibian owned undertakings.

2.6 Customer Engagements

- 2.6.1 In order to curb the implementation of full line forcing and the potential portfolio effects that the Commission foresees arising post-merger on the part of the Merged Entity, the Commission imposes the following condition in terms of customer engagement:
- 2.6.2 The Merged Entity shall not require customers in Namibia to purchase products within one product category (e.g. beer products) on condition that they also purchase products within any other product categories (e.g. wines) supplied by the Merged Entity.

2.7 MSME Development Fund

- 2.7.1 The COVID-19 pandemic affected the economy resulting in business closures and employment losses. The micro-, small and medium enterprises (MSME) sector was affected with small business unable to absorb the shock and not having the tools to overcome the challenges associated with the pandemic. Having considered the effects of the pandemic on the economy and especially on the micro, small and medium enterprises, and in order to give effect to public interest considerations, specifically sections 47(2)(f) and (h) of the Act, the Commission impose the following condition:
- 2.7.2 The Merged Entity shall make available N\$ 25 million over a five-year period for MSME development in Namibia participating in the manufacturing and supply of beverages industry from the Closing Date for investments as may be approved by the Committee appointed to oversee the implementation of this Condition.
- 2.7.3 The MSME Development Fund shall be disbursed equally over the five-year period. The MSME Development Fund shall be used to build capacity of MSMEs in the manufacturing and supply of beverages industry controlled by historically disadvantaged persons to be identified by the Committee that will oversee the implementation of this Condition. The Committee must develop criteria which will be used to select the beneficiary MSMEs.

- 2.7.4 The MSME Development Fund will be used to develop amongst others, technical trade and operational skills, end-to-end business management skills, digital, technology or related skills; or build capacity in areas of business directly or indirectly related to servicing the Merged Entity, including but not limited to the supply of technical services (e.g. stainless steel welding); the supply of secondary packaging (e.g. paper or plastic labels); the supply of advertising and promotion(al) services (e.g. manufacture of branded apparel or other branded items).

The Condition Implementation Committee

- 2.7.5 In order to give full effect to the intention of the Commission as cited under paragraph 2.7.2, the Commission deems it appropriate to impose the following condition:
- 2.7.6 The MSME Development Fund shall be managed by the Condition Implementation Committee (“the Committee”). The Committee shall be constituted for a five-year period and shall consist of five members. The members are to be drawn from the following organisations: two members representing the Ministry of Industrialisation and Trade, one member representing the Merged Entity, one member from Namibia Investment Promotion Development Board and one member from the Namibian Competition Commission. The Committee shall be chaired by one representative from the Ministry of Industrialisation and Trade. The Secretariat of the Committee shall be a representative from the Ministry of Industrialisation and Trade. The Committee shall meet as and when it so determines but not less than twice a year.

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS

3 Merger Specific Retrenchments

- 3.1 In the event that the Merged Entity identifies any potential merger specific retrenchments below management level, it will request the Commission to agree to these merger specific retrenchments by way of written correspondence at least one month before the retrenchments are due to be effected. The Merged Entity’s written correspondence must include, but shall not necessarily be limited to:
- 3.1.1 a list of employees likely to be affected by the merger specific retrenchments;
 - 3.1.2 the number and categories of employees likely to be affected by the merger specific retrenchments, as well as their job titles;
 - 3.1.3 the reasons for the retrenchments;
 - 3.1.4 a description of the steps taken by the Merged Entity to avoid the merger specific retrenchments; and
 - 3.1.5 the intended date of the merger specific retrenchments.
- 3.2 The Commission must within 20 business days of receipt of the correspondence referred to in paragraph 3 above indicate to the Merged Entity whether:
- 3.2.1 it agrees to the merger specific retrenchments;

- 3.2.2 does not agree to the merger specific retrenchments; or
- 3.2.3 it requires further information from the Merged Entity prior to giving its consent.
- 3.3 In the event that the Commission requires further information it will, within 20 business days of receiving the aforementioned additional information, indicate in writing to the Merged Entity whether it agrees to or does not agree to these retrenchments.
- 3.4 The Commission will not unreasonably withhold its consent to the merger specific retrenchments. In the event that the Commission withholds its consent to the merger specific retrenchments it will provide the Merged Entity with its reasons for withholding its consent in writing.

4 Non-merger Specific Retrenchments

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

5 Reporting Obligations

- 5.1 In order for the Commission to monitor compliance with the conditions, the Merged Entity must, for the duration of the subsistence of the merger conditions, in addition to the correspondence referred to in paragraphs above, provide the Commission with reports:
 - 5.1.1 on the Closing Date informing the Commission of the implementation of the transaction;
 - 5.1.2 within two months of the Closing Date; and
 - 5.1.3 thereafter on a bi-annual basis.
- 5.2 The Merged Entity shall within two months of the Closing Date publish a detailed public non-confidential notice of the merger conditions.

- 5.3 In respect of paragraph 5.2, the Merged Entity shall provide the Commission with a copy of the notice.

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

regarding employment,

- 6.1.1 a copy of the detailed notice published notifying employees of the condition regarding employment;
- 6.1.2 a list of all the employees as at the date of the report which includes their full names, positions, job grades and remuneration;
- 6.1.3 copies of the existing (pre-proposed transaction) employment contracts indicating the terms and conditions of employment. Where employment contracts are concluded verbally these must be reduced to writing and where the terms and conditions of employment are not contained in the employment contracts, the Merged Entity must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the first report);
- 6.1.4 a list of the employees recruited, promoted and retrenched from the time that the merger was approved or since the period covered by the most recent merger compliance report submitted to the Commission;
- 6.1.5 the reasons for the retrenchments;
- 6.1.6 a list of employees dismissed (if any) as a result of disciplinary conduct as provided for under the relevant and applicable policies of the Merged Entity;
- 6.1.7 the contact details of the dismissed employees as indicated in paragraph 6.1.6 above;
- 6.1.8 a copy of the Affirmative Action Report for the Merged Entity as submitted to the Office of the Employment Equity Commissioner; and
- 6.1.9 any additional information that may reasonably be required by the Commission to monitor compliance with the condition.

regarding access to Chilled Space,

- 6.1.10 a revised Commercial Policy on coolers and refrigerators;
- 6.1.11 copy of the detailed notice provided to customers and potential customers regarding access to Chilled Space;
- 6.1.12 a list of the customers, their physical addresses and as well as contact details of the customers in possession of coolers belonging to the Merged Entity;

regarding Divestment,

- 6.1.13 Information in respect of the Purchaser and such information that would satisfy the Commission that the Purchaser will ensure the competitiveness of Strongbow in Namibia;

- 6.1.14 At the stage of implementation, provide the Commission with a merger notification, in the instance that the said transaction is a notifiable merger, alternatively, in the instance that the said merger does not constitute a merger, provide the Commission with reasons motivating that conclusion.

regarding local manufacturing,

- 6.1.15 a copy of the detailed notice published notifying members of the public of the condition regarding local manufacturing;
- 6.1.16 a progress report on the implementation of the production lines to be installed at the NBL facilities; and
- 6.1.17 upon conclusion of the implementation of the production lines referred to in 2.4.2.1 and 2.4.2.2, detailed information on the output per category produced from the said production lines.

regarding local sourcing,

- 6.1.18 a copy of the detailed notice published notifying members of the public of the condition regarding local sourcing;
- 6.1.19 in the event that the Merged Entity identifies the need to change;
- 6.1.19.1 from Input Products sourced locally to Input Products that are not sourced locally (pursuant to paragraph 2.5.2 of the Conditions); or
- 6.1.19.2 to source services other than from Namibian-owned service providers (pursuant to paragraph 2.5.3 of the Conditions);
- 6.1.20 it shall inform the Commission of the change. The Merged Entity's correspondence must include, but is not limited to:
- 6.1.20.1 the type, number and categories of Input Products or services (likely) to be affected by the change;
- 6.1.20.2 a reasonable explanation of the reasons that give rise to the change;
- 6.1.20.3 a description of the steps taken by the Merged Entity to avoid the change;
- 6.1.20.4 the date of the change; and
- 6.1.20.5 any further information that may be required by the Commission.

regarding MSME Development Fund;

- 6.1.21 a copy of the detailed notice published notifying members of the public of the MSME Development Fund;
- 6.1.22 a progress report outlining, but not limited to, the following issues;
- 6.1.22.1 governing documents of the Condition Implementation Committee;

- 6.1.22.2 detailed reports on programs undertaken or envisaged by the Committee;
- 6.1.22.3 minutes of Condition Implementation Committee meetings;
- 6.1.22.4 proof of funds disbursed in completion of the duties of the fund;
- 6.1.22.5 any documents in relation to the fund that may be relevant to the Commission; and
- 6.1.22.6 any further information that may be requested by the Commission from time to time.

7 Definitions and Interpretation

“Acquiring Group” means the total of all the undertakings as defined in rule 27(1)(a)(b)(c) of the Rules made under the Competition Act, 2003 (Act No. 2 of 2003).

“Chilled Space” means coolers and refrigerators in Outlets.

“Closing Date” shall mean the date on which the Commission gives notice of determination to the Merged Entity in the government Gazette.

“Commission” means the Namibian Competition Commission, a statutory body established in terms of the Competition Act, 2003 (Act No. 2 of 2003).

“Conditions Implementation Committee” means a committee established in terms of the Conditions with the purpose of administering the MSME Development Fund.

“Date of Approval” means the date on which the merger is approved by the Commission.

“Distell” means Distell Namibia Limited, Namibia Wine and Spirits Ltd, and Distillers Corporation Namibia (Pty) Ltd, companies duly incorporated in accordance with the laws of Namibia and Distell Group Holding Limited, a company incorporated in terms of the laws of the Republic of South Africa.

“Divestment” means the sale of the licencing rights of Strongbow as described herein to a Purchaser.

“Input Products” includes but is not limited to glass bottles, cans, ends, crowns, paper labels, packaging, crates, kegs and raw materials required for beer production such as malted barley, hops and other grains.

“Merged Entity” means the combination (within a newly created entity, Sunside Acquisitions Limited) of Heineken South Africa (RF) Proprietary Limited (“Heineken SA”), Namibia Breweries Limited (“NBL”) and the flavoured alcoholic beverages, wine and spirits businesses of Distell Group Holdings Limited (“Distell”).

“Namibia” means the Republic of Namibia.

“NBL” means Namibia Breweries Limited, a company duly incorporated in accordance with the laws of Namibia, having its principal business address at Iscor Street, Windhoek, Namibia.

“Outlet” includes licensed on- and off- consumption outlets.

“Purchaser” means an independent third party, which is not directly or indirectly related or affiliated to the Merged Entity.

“retrenchments” constitute dismissals arising from collective termination or redundancy.

“Strongbow” means the licencing rights associated to Strongbow Apple Cider in the Territory.

“the Territory” means Namibia, South Africa, Botswana, Lesotho and Eswatini.

“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.

In these Conditions and its interpretations:

Headings to the clauses are for reference purpose only and shall not govern or affect the interpretation of these conditions.

Reference to statute or statutory provisions include any subordinate legislation made from time to time thereunder and shall apply as amended.

- 8** The Commission’s decision is based on the grounds that the proposed merger is likely to prevent or lessen competition in Namibia in the market for the distribution and marketing of flavoured alcoholic beverages, affect employment and affect the ability of small and medium sized enterprises, especially those owned by historically disadvantaged persons as envisaged by section 47(2) of the Competition Act, 2003.
- 9** 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

Authorised signature:

Date:
