



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 803

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: BANCO BIC S.A // BANCO BIC NAMIBIA HOLDINGS LTD
CASE NO.: 2023SE0039MER

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 **13 September 2023**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority, in terms of section 48(1) of the Act, to revoke a decision approving the implementation of a proposed merger if –
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 804

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: BROADREACH YIELD (PTY) LTD // TREKKOPJE SOLAR ENERGY
NAMIBIA (PTY) LTD
CASE NO.: 2023SE0036MER

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 **11 September 2023**.
2. Please note that the Commission has **approved the proposed merger without conditions**.

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

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 805

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: MERGER NOTIFICATION – VITOL EMERALD BIDCO
(PTY) LTD // ENGEN LIMITED
CASE NO.: 2023MAR0010MER

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 **24 March 2023**.
2. Please note that the Commission has **approved the proposed merger with the following conditions:**
3. **DEFINITIONS**

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

- 3.1 “**Acquiring Group**” means the total of all undertakings as defined in rule 27(1)(a) (b) and (c) as amended;
- 3.2 “**Acquiring Undertaking**” means Vitol Emerald Bidco (Pty) Ltd;-
- 3.3 “**Approval Date**” means the date on which the Merger is approved by the Commission;
- 3.4 “**CLODO service station**” means a service station situated on property leased by the Merged Undertaking from a third party, the fuel retailing business of which is owned and operated by an independent dealer (being an acronym for “Company Leased, Dealer Operated”);

- 3.5 “**CODO service station**” means a service station situated on property owned by the Merged Undertaking, the fuel retailing business of which is owned and operated by an independent dealer (being an acronym for “Company Owned, Dealer Operated”);
- 3.6 “**Commission**” means the Namibian Competition Commission;
- 3.7 “**Competition Act**” means the Competition Act, 2003 (Act No. 2 of 2003);
- 3.8 “**Conditions**” mean the conditions set out in this Annexure A (only);
- 3.9 “**Days**” means any calendar day other than a Saturday, a Sunday or an official public holiday in Namibia (i.e. business days);
- 3.10 “**Divestiture**” means the disposal and transfer, collectively or individually, of the retail service stations and retail supply agreements in respect of the fuel requirements of the service stations specified in **Schedule 1**, including but not limited to, in the case of CODO service stations, the properties on which the service stations are situated, and, in the case of CLODO service stations, the leases over the properties on which the service stations are situated, in respect of DODO service stations, the retail supply agreements between the Merged Undertaking or Target Undertaking and an independent dealer;
- 3.11 “**Divestiture Business**” means service stations specified in Schedule 1 [confidential];
- 3.12 “**DODO service station**” means a service station situated on property owned by an independent dealer, the fuel retailing business of which is owned and operated by an independent dealer (being an acronym for “Dealer Owned, Dealer Operated”);
- 3.13 “**First Divestment Period**” means a period of 12 months from the Implementation Date or such longer period as may be agreed between the Commission and the Merged Undertaking;
- 3.14 “**Implementation Date**” means the date, expected to be subsequent to the Approval Date, on which the Merger is implemented by the Merged Undertaking.;
- 3.15 “**Merged Undertaking**” means the Acquiring Undertaking and the Target Undertaking;
- 3.16 “**Merger**” means the implementation of the Proposed Transaction;
- 3.17 “**Proposed Transaction**” means the transaction that was notified to the Commission on 24 March 2023 that concerns the acquisition by the Acquiring Undertaking of the Target Undertaking;
- 3.18 “**Purchaser(s)**” means the identified purchaser(s) of the Divestiture Business, which must be an independent third party or parties, which may not be a company controlled by or affiliated to the Acquiring Group;
- 3.19 “**Second Divestment Period**” means a period of 6 months after the completion of the First Divestiture Period or such longer period as may be agreed between the Commission and the Merged Undertaking;
- 3.20 “**Target Undertaking**” means ‘Engen Limited’ and Engen Namibia Proprietary Limited;

- 3.21 “**Vivo Namibia**” means Vivo Energy Namibia Limited, a subsidiary of the Acquiring Group;

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

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

In order to address any horizontal concerns following the Proposed Transaction, the following shall apply:

- 4.1.1 The Merged Undertaking shall within the First Divestment Period divest the Divestiture Business on reasonable commercial terms to a Namibian owned undertaking or undertakings subject to receipt of all relevant regulatory approvals.

4.1.1.1 A Namibian owned undertaking contemplated under clause 4.1.1 is a Namibian owned undertaking or consortium of Namibian owned undertakings having less than 10% fuel retail market share at the Implementation Date.

4.1.1.2 In calculating fuel retail market share for purposes of clause 4.1.1.1, the Merged Undertaking shall consider the total amount of service stations owned by the said Namibian owned undertaking relative to the total number of service stations in Namibia.

4.1.1.3 The Divestment as contemplated under 4.1.1 shall not include a purchaser(s) that has a pre-existing relationship with the Merged Undertaking at the approval date.

- 4.1.2 In the event that it is not able to divest of the Divestiture Business to a Purchaser or Purchasers as contemplated in clause 4.1.1 within the First Divestiture Period, it will seek to divest of the Divestiture Business to any Purchaser or Purchasers within the Second Divestiture Period.

4.1.2.1 Where the Merged Undertaking fails to divest itself of the entire Divestiture Business after the Second Divestment Period, it may approach the Commission for an extension of 6 months (which may not unreasonably be denied).

4.1.2.2 If the said 6-month extension lapses and the Merged Undertaking has still not divested itself of the entire Divestiture Business, it shall be obligated to terminate its retail supply agreements with the undivested service stations forming part of the Divestiture Business, and which costs of termination shall be borne by the Merged Undertaking.

4.1.2.3 The Divestment as contemplated under 4.1.2 shall not include a purchaser(s) that has a pre-existing relationship with the Merged Undertaking at the approval date.

- 4.1.3 The Merged Undertaking shall not supply fuel to a divested service station which forms part of the Divestiture Business for a five-year period after its divestment.

4.1.3.1 The condition contemplated in clause 4.1.3 is subject to review after expiry.

- 4.1.3.2 The condition contemplated in clause 4.1.3 shall commence on the same date on which the merged undertaking shall divest of the last of the sites to be divested.
- 4.1.4 The Merged Undertaking shall not, directly, or indirectly acquire any service stations or retail licences during the divestment period (period from the First Divestment Period until the conclusion of the Second Divestment Period)
- 4.1.5 The condition contemplated in clause 4.1.4 is subject to a 3 (three) year review. Further, the Condition shall apply to any special purpose vehicles set up by the Merged Undertaking or its shareholders and shall also specifically apply to the shareholders of the Merged Undertaking, for any attempt to circumvent the condition.
- 4.1.6 The Merged Undertaking shall within 15 business days of the Implementation Date inform the dealers of the service stations included in the Divestiture Business in writing of this Condition. In addition, the Merged Undertaking must place a notice in a relevant local publication/s that has a reach to potential purchasers informing them of this Condition.
- 4.2 Employment condition (the “**Employment Condition**”)
- 4.2.1 No merger specific retrenchments by the Merged Undertaking will be permitted for a period of two years after the Implementation Date.
- 4.2.2 The Merged Undertaking may offer to any employee in an overlapping position, a voluntary severance package commensurate with their current earning capacity.
- 4.2.3 The condition shall not apply to any employee who may in the ordinary course of business be fired, be dismissed, retire or resign.

5. MONITORING AND REPORTING PROCEDURES IN COMPLIANCE WITH THE CONDITIONS

5.1 The Horizontal Condition:

- 5.1.1 The Merged Undertaking shall provide the following information to the Commission:
- 5.1.1.1 Submit, in writing, the name(s) of the Purchaser(s) together with any relevant documentation in respect of the Purchaser(s) that the Commission may reasonably request, as well as the proposed terms of the purchase(s), for approval by the Commission within 10 Business days after such submission (which shall not be unreasonably withheld), prior to concluding any sale agreement(s) with the Purchaser(s); and the Purchaser(s) shall provide the Commission with an affidavit deposed to by the Chief Executive Officer (or person in a comparable position) of the Purchaser(s) confirming the accuracy of all information relating to the Purchaser(s).
- 5.1.1.2 Submit in writing a document listing the service station customers to whom the Merged Undertaking supplies fuel, indicating their names and volumes supplied. A senior official of the Merged Undertaking shall provide the Commission with an affidavit confirming the accuracy thereof.

The Employment Condition:*General*

- 5.2 The Merged Undertaking shall provide the following information to the Commission:
- 5.2.1 a list of all the employees at the Merged Undertaking, which includes their full names, positions and relevant department or division, job grades and remuneration;
 - 5.2.2 copies of the existing (pre-Proposed Transaction) employment contracts for each different job grade and different position indicating the terms and conditions of employment. Where employment contracts were concluded verbally these must be reduced to writing and where the terms and conditions of employment are not contained in the employment contracts, the Merged Undertaking must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the first report);
 - 5.2.3 copies of the new employment contracts, under which the employees of the target undertaking are employed by the Merged Undertaking, for each different job grade and different position indicating the terms and conditions of employment. Where employment contracts are concluded verbally, these must be reduced to writing and where the terms and conditions of employment are not contained in the employment contracts, the Merged Undertaking must provide a written statement containing the terms and conditions in respect of each job grade and position (which condition is only relevant for the first report); and
 - 5.2.4 a list, including reasons, of the Namibian employees who have left the employment of Vivo Namibia, Engen Namibia and, after the Implementation Date, the Merged Undertaking, from the Approval Date or since the period covered by the most recent merger compliance report submitted to the Commission.

Non merger specific retrenchments

- 5.3 For the sake of transparency, in the event that Vivo Namibia, Engen Namibia or the Merged Undertaking identifies any non-merger specific retrenchments in relation to any of these undertakings, it will inform the Commission of these potential retrenchments at least one month before these retrenchments are due to be effected. The relevant undertaking's correspondence must include, but is not limited to:
- 5.3.1 a list of employees likely to be affected by non-merger specific retrenchments;
 - 5.3.2 the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;
 - 5.3.3 an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);
 - 5.3.4 a description of the steps taken by the relevant undertaking to avoid the non-merger specific retrenchments; and
 - 5.3.5 the intended date of the non-merger specific retrenchments.

Reporting dates

- 5.4 In order for the Commission to monitor compliance with the Conditions, the Merged Undertaking shall provide the Commission with merger compliance reports on the following dates:
- 5.4.1 30 April 2024, for the status as at the Implementation Date (initial report).
- 5.4.2 Thereafter on a bi-annual basis, starting on 1 October 2024, until the expiry of the Conditions imposed.

General

- 5.5 Vivo Namibia and Engen Namibia shall circulate a non-confidential version of the Conditions (i.e. this Annexure A only) to all their employees within 10 (ten) days of the Approval Date.
- 5.6 As proof of compliance, the Managing Director of Vivo Namibia and Engen Namibia respectively shall, within 10 (ten) days of circulating the Conditions, submit affidavits attesting to the circulation of the Conditions and provide copies of the notices that were sent to such employees.
- 5.7 The Merged Undertaking shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 5.8 Vivo Namibia, Target Undertaking and, in due course, the Merged Undertaking shall submit affidavits (deposed to by the respective Managing Directors) in accordance with the reporting dates referred to above, to update the Commission and / or confirm its compliance with the Conditions for the duration of all Conditions.
- 5.9 The Commission may also request any additional information that may reasonably be required by the Commission to monitor compliance with the Conditions.
- 5.10 Note that the Commission has the authority in terms of section 48(1) of the Competition Act to revoke a decision approving the implementation of a proposed merger if –
6. the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or
 7. any condition attached to the approval of the merger that is material to the implementation is not complied with:
 - 7.1 All correspondence in relation to the Conditions shall be submitted to the following email address: shangadi.johannes@nacc.com.na .
8. The Commission's decision is based on the grounds that the proposed merger is likely to result in the prevention or substantial lessening of competition or in any undertaking acquiring or strengthening a dominant position and is likely to affect employment negatively, as the transaction results in a duplication of roles and therefore resulting in retrenchment of employees, grounds 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.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 806

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: 3 SITERS (PTY) LTD // CAPESPAN GROUP (PTY) LTD
CASE NO.: 2023OCT0043MER

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 October 2023**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority, in terms of section 48(1) of the Act, to revoke a decision approving the implementation of a proposed merger if –
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 807

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: DIEDERICK JOHANNES CONELISSEN // STAR BODY WORKS
(PROPRIETARY) LIMITED
CASE NO.: 2023SEP0041MER

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 **18 September 2023**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority, in terms of section 48(1) of the Act, to revoke a decision approving the implementation of a proposed merger if –
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 808

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: EMERALDSAND PROPERTIES (PROPRIETARY) LIMITED //
NAMIBIA MEDIA HOLDINGS (PROPRIETARY) LIMITED // NEWSPRINT NAMIBIA
(PROPRIETARY) LIMITED
CASE NO.: 2023SEP0037MER

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

1. The Commission has received notification of the abovementioned proposed merger on **4 September 2023**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.

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

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 809

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: MONT VINUM PROPERTIES (PTY) LTD // AM WEINBERG
COMMERCIAL PROPERTIES
CASE NO.: 2023SEP0038MER

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 **11 September 2023**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority, in terms of section 48(1) of the Act, to revoke a decision approving the implementation of a proposed merger if –
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 810

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO
THE PROPOSED MERGER: KARSTEN NAMIBIA AGRICULTURE (PTY) LTD // CAPE
ORCHARD COMPANY (PTY) LTD
CASE NO.: 2023OCT0045MER

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 October 2023**.
2. Please note that the Commission has **approved the proposed merger with conditions**.

2.1 Definition

- 2.1.1 “Acquiring Undertaking” means Karsten Namibia Agriculture Proprietary Limited;
- 2.1.2 “Business Days” means any day excluding a Saturday, Sunday or Namibian public holiday;
- 2.1.3 “Commission” means the Namibian Competition Commission, a statutory body established in terms of the Competition Act, 2003 (Act No. 2 of 2023);
- 2.1.4 “Date of implementation” means the date on which the proposed merger is implemented by the merging parties
- 2.1.5 “Existing Staff Complement” means the current employees of the Primary Target Undertakings;
- 2.1.6 “Merging undertaking” means both the Acquiring Undertaking and the Primary Target;
- 2.1.7 “Proposed Transaction” means the single indivisible and intertwined transaction between the Acquiring Undertaking and the Primary Target Undertakings; and
- 2.1.8 “Primary Transferred Undertakings” means the single indivisible and intertwined transaction between the Acquiring Undertaking and the Primary Target Undertaking and the Primary Target Undertakings; and
- 2.1.9 “Primary Transferred Undertakings” means the movable agricultural asset, immovable agricultural land and where applicable, employees of Cape Orchard Company (Namibia) Proprietary Limited (In liquidation), Anneke Property Investments (Pty) Ltd (In liquidation), Ditta Property Investments (Pty) Ltd (In liquidation) and Grape Alliance Management (Namibia) (Proprietary) Limited (In liquidation).

2.2 Employment

- 2.2.1 Following implementation, the Merged undertaking shall *appoint staff and shall first consider the Existing Staff Complement from which to make*

appointments, subject to specific qualifications and experience required.

- 2.2.2 The condition contemplated in clause 2.2.1 shall have a duration of 2 (two) years from the date of implementation.

COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS

2.3 Reporting Obligations

- 2.3.1 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:

2.3.1.1 on the implementation date informing the Commission of the implementation of the transaction;

2.3.1.2 within 2 (two) months of the implementation date; and

2.3.1.3 thereafter on a bi-annual basis

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

Regarding employment

- 2.4.1 a list of all the employees as at the date of the report which includes their full names, positions and relevant department or division;
- 2.4.2 details of the employees appointed from the existing staff complement;
- 2.4.3 reasons if employees were not appointed from the existing staff complement; and
- 2.4.4 any additional information that may be required by the Commission to monitor compliance with the condition.

3. The Commission's decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.

4. Note that the Commission has the authority, in terms of section 48(1) of the Act, to revoke a decision approving the implementation of a proposed merger if –

(a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*

(b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 811

2023

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: RWCO GMBH & CO. KG // SCHWENK NAMIBIA
(PROPRIETARY) LIMITED
CASE NO.: 2023JUN0022MER

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 June 2023**.
2. Please note that the Commission has **approved the proposed merger with conditions**.
 - 2.1 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. However, the transaction raises an opportunity to promote local ownership through additional Namibian Ownership in Ohorongo Cement. For the above purpose, the following condition is proposed:
 - 2.1.1 The right of first refusal and/or call option of the acquiring and/or merged undertaking notwithstanding, at any stage after the implementation of the transaction, should any shareholding become available for purchase, the acquiring and/or merged undertaking shall be prohibited from acquiring any further shareholding for a period of one (1) year from the date of offering of such shareholdings, to allow opportunity to a Namibian owned undertaking to acquire such shareholding.
 - 2.1.2 Should no Namibian entity successfully acquire the shareholding by the end of such year, the acquiring and/or merged undertaking shall be entitled to acquire shareholding, if so advised and/or elected.
 - 2.2 **Reporting dates**
 - 2.2.1 The Acquiring Undertaking and the Target Undertaking shall circulate a copy of the conditions (i.e this Annexure A only) to all its employees and other shareholders within 10 (ten) days of the approval date.
 - 2.2.2 As proof of compliance, the Managing Director of the Acquiring Undertaking and the Target Undertaking respectively shall, within 10 (ten) days of circulating the conditions, submit an affidavit attesting to the circulation of the conditions and provide a copy of the notice that was sent to such employees and other shareholders.
 - 2.2.3 The Acquiring Undertaking shall inform the Commission in writing of the Implementation Date with 5 (five) days of its occurrence.
 - 2.2.4 The Commission may also request any additional information that may reasonable be required by the Commission to monitor compliance with the conditions.
 - 2.2.5 As proof of compliance, the Managing Director of the Acquiring Undertaking shall, within 10 (ten) days of acquiring any additional shareholding, submit

an affidavit attesting that it did not bid or exercise any call option for a period of 1 (one) year, after the now acquiring shareholding was made available for public purchase.

- 2.2.6 Attached to the affidavit, the Managing Director shall proffer the necessary supporting documents, which documents shall include but not be limited to, the public offer to purchase any shareholding, the tender by the acquiring undertaking to acquire the additional shareholding, and any agreement(s) concluded in respect of such acquisition.

2.3 Definitions

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

2.3.1.1 “Acquiring Group” means the total of all undertakings defined in rule 27(1)(a)(b) and (c) as amended;

2.3.1.2 “Acquiring Undertaking” means RWCO GMBH & CO.KG;

2.3.1.3 “Approval date” means the date on which the Merger is approved by the Commission;

2.3.1.4 “Commission” means the Namibian Competition Commission;

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

2.3.1.6 “Conditions” means the conditions set out in this Annexure A (only);

2.3.1.7 “Days” means any calendar day other than a Saturday, a Sunday or an official public holiday in Namibia (i.e. business days);

2.3.1.8 “Implementation Date” means the date, which proceeds the Approval Date, on which the Merger is implemented by the Merging Parties;

2.3.1.9 “Proposed Transaction” means the transaction that was notified to the Commission 8 June 2023 concerns the acquisition by the Acquiring Undertaking of the Target Undertaking.

2.3.1.10 “Merged Undertaking” means the Acquiring Undertaking and the Target Undertaking;

2.3.1.11 “Target Undertaking” means the entire issued share capital of Schwenk Namibia inclusive of shares held in Ohorongo Cement (Proprietary) Limited and Energy for Future (Pty) Ltd by Schwenk Namibia (Pty) Ltd.

2.3.1.12 “Date of Offering” shall be the date on which a minority shareholder makes available any shareholding for public purchase.

3. The Commission’s decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.

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

A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION

NAMIBIAN COMPETITION COMMISSION

No. 812

2032

NOTICE OF DETERMINATION MADE BY THE COMMISSION IN RELATION TO THE
PROPOSED MERGER: BLUE MAPLE LIMITED // KARSTEN NAMIBIA AGRICULTURE
(PROPRIETARY) LIMITED
CASE NO.: 2023SEP0045MER

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 September 2023**.
2. Please note that the Commission has **approved the proposed merger without conditions**.
3. The Commission's decision is based on the grounds that the proposed merger is not likely to prevent or lessen competition in Namibia, as envisaged by section 47(2) of the Competition Act, 2003.
4. Note that the Commission has the authority, in terms of section 48(1) of the Act, to revoke a decision approving the implementation of a proposed merger if –
 - (a) *the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or*
 - (b) *any condition attached to the approval of the merger that is material to the implementation is not complied with.*

A. P. ITHINDI
CHAIRPERSON
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