



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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N\$6.00

WINDHOEK - 8 June 2020

No. 7233

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## General Notices

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### NAMIBIAN COMPETITION COMMISSION

No. 215

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: OTJIKOKO (PROPRIETARY) LIMITED // N/A'AN KU SÊ FOUNDATION  
(INCORPORATED ASSOCIATION NOT FOR GAIN)  
CASE NO.: 2019NOV0046MER

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 April 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**

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### NAMIBIAN COMPETITION COMMISSION

No. 216

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: NAUDE GERHARDUS ALBERT // NAMIBIA EXOTIC GAME (PTY) LTD  
CASE NO.: 2020FEB0008MER

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 February 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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 217

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO  
PROPOSED MERGER: ONGAVA GAME RESERVE (PTY) LTD // NICOLAAS  
BURGER IN RELATION TO FARM BURGERSHOF NO. 432  
CASE NO.: 2020JAN0001MER

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 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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 218

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO  
PROPOSED MERGER: VEOLIA EAU – COMAGNIE GÉNÉRALE DES EAUX //  
UJAMS WASTEWATER TREATMENT COMPANY (PTY) LTD  
CASE NO.:2020JAN0004MER

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 January 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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 219

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO  
PROPOSED MERGER: OUTOTEC OYJ // METSO OYJ  
CASE NO.:2019DEC0057

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 December 2019**.
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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 220

2020

NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: OKANENEMBANDI FARMING COMPANY (PTY) LTD // CHEETAH  
CONSERVATION FUND NAMIBIA  
CASE NO.:2020FEB0006MER

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 February 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**

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**NAMIBIAN COMPETITION COMMISSION**

No. 221

2020

**NOTICE OF DETERMINATION MADE BY COMMISSION IN RELATION TO PROPOSED  
MERGER: BOKOMO (NAMIBIA) (PTY) LTD // TONGAAT HULLET (NAMIBIA) (PTY) LTD  
CASE NO.: 2019NOV0056MER**

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 **5 December 2019**.
2. Please note that the Commission has **approved the proposed merger subject to the following condition:**
  - 2.1 Following implementation, there shall be no retrenchment of employees of the merged undertaking as a result of the merger from the date of the approval of the merger.
  - 2.2 For the sake of clarity retrenchments do not include:
    - 2.2.1 voluntary separation, resignation and voluntary early retirement (“voluntary separations”); and
    - 2.2.2 retrenchments which are merger specific but agreed to with the Commission in writing after the date of approval of the merger (“merger specific retrenchments”).
  - 2.3 The employees of Tongaat Hulett Namibia (“THN”) will be employed by Bokomo Namibia (Pty) Ltd (“Bokomo”) 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 proposed transaction.
  - 2.4 The Commission’s decision is based on grounds that although the proposed transaction is not likely to substantially prevent or lessen competition in Namibia, as envisaged by section 47(2) (a) of the Competition Act, 2003, it raises public interest concerns, relating to employment. The merging parties have indicated that no merger specific retrenchments will result from the merger despite synergies, and/or possible relocation in relation to the target undertaking. The Commission notes that given the synergies that are likely to arise from the merger there are possible duplications of roles for employees of Tongaat Hulett Namibia (Pty) Ltd and Bokomo Namibia (Pty) td. The Commission in order to safeguard employment therefore recommends a conditional approval of the transaction.
3. **COMPLIANCE PROCEDURES, MONITORING AND REPORTING OBLIGATIONS**
  - 3.1 **Merger Specific Retrenchments**
    - 3.1.1 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:
      - 3.1.1.1 a list of employees likely to be affected by the merger specific retrenchments;
      - 3.1.1.2 the number and categories of employees likely to be affected by the merger specific retrenchments, as well as their job titles;
      - 3.1.1.3 the reasons for the retrenchments;

- 3.1.1.4 a description of the steps taken by the merged undertakings to avoid the merger specific retrenchments; and
      - 3.1.1.5 the intended date of the merger specific retrenchments.
4. The Commission must within 20 business days of receipt of the correspondence referred to in paragraph 3.1. above indicate to the merged undertaking whether:
  - 4.1 it agrees to the merger specific retrenchments;
  - 4.2 does not agree to the merger specific retrenchments; or
  - 4.3 it requires further information from the merged undertaking prior to giving its consent.
5. 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 undertaking whether it agrees to or does not agree to these retrenchments.
6. 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 undertakings with its reasons for withholding its consent in writing.
7. **Non-merger specific retrenchments**
  - 7.1 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:
    - 7.1.1 a list of employees likely to be affected by non-merger specific retrenchments;
    - 7.1.2 the number and categories of employees likely to be affected by the non-merger specific retrenchments, as well as their job titles;
    - 7.1.3 an explanation of the reasons that give rise to the non-merger specific retrenchments (including changes to operational requirements);
    - 7.1.4 a description of the steps taken by the merged undertakings to avoid the non-merger specific retrenchments; and
    - 7.1.5 the intended date of the non-merger specific retrenchments.
8. **Reporting obligations**
  - 8.1 In order for the Commission to monitor compliance with the conditions, the merged undertaking must, for the duration of the subsistence of the condition as set out in paragraph 2 above, in addition to the correspondence referred to in paragraphs 3.1 and 7 above, provide the Commission with reports:
    - 8.1.1 On the Implementation Date informing the Commission of the implementation of the transaction;
    - 8.1.2 Within two months of the Implementation Date; and
    - 8.1.3 Thereafter on a bi-annual basis commencing on a date to be communicated to the parties;
    - 8.1.4 After five years of the implementation of the transaction, the merged undertaking may at any time apply to the Commission to remove any reporting obligation created in terms of the conditions imposed;
    - 8.1.5 The application must contain all the relevant information in the merged entity's possession to assist the Commission in making a decision in relation to the reporting obligations;
    - 8.1.6 After considering the application the Commission must determine and inform the parties, providing reasons therefor, whether or not the reporting obligation will be removed or if the Commission will continue to require the parties to report in terms of the conditions for a further specified period.

9. The merger compliance reports must include but shall not necessarily be limited to the following information:
- 9.1 **Regarding employment**
- 9.1.1 a list of all the employees as at the date of the report which includes their full names, positions, job grades and remuneration;
- 9.1.2 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 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);
- 9.1.3 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;
- 9.1.4 the reasons for the retrenchments;
- 9.1.5 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 undertaking;
- 9.1.6 The contact details of the dismissed employees as indicated in paragraph 9.1.5 above;
- 9.1.7 a copy of the Affirmative Action Report for the merged undertakings as submitted to the Office of the Employment Equity Commissioner; and
- 9.1.8 any additional information that may reasonably be required by the Commission to monitor compliance with the condition.
10. **Definitions**
- 10.1 The term “merged undertaking” means Bokomo Namibia (Pty) Ltd, including any subsidiaries of the said entities, subsequent to implementation of the proposed merger;
- 10.2 The term “acquiring group” means the total of all the undertakings as defined in rule 27(1)(a)(b)(c);
- 10.3 “Commission” means the Namibian Competition Commission, a statutory body established in terms of the Competition Act, 2003 (Act No. 2 of 2003);
- 10.4 “Retrenchments” constitute dismissals arising from collective termination or redundancy;
- 10.5 “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;
- 10.6 “Implementation Date” means the date on which the Merger is implemented by the parties;
- 10.7 References to “date of approval” means the date on which the merger is approved by the Commission;
- 10.8 “Bokomo Namibia (Pty) Ltd” means Bokomo Namibia (Pty) Ltd, a private company incorporated in accordance with the laws of the Republic of Namibia with registration number 63/1848 and having its principal business address at United House, corner of Iscor and Solingen Streets, Northern Industrial Area, Windhoek, Namibia.



- 10.9 “Tongaat Hulett Namibia (Pty) Ltd ” means Tongaat Hulett Namibia Pty Ltd, a private company incorporated in terms of the laws of Namibia, with registration number 96/315 and having its registered principal place of business at Unit 3, 2nd Floor, Ausspann Plaza, Dr Agostinho Neto Road, Ausspannplatz, Windhoek, Namibia.

**P. CARLSON**  
**CHAIRPERSON**  
**NAMIBIAN COMPETITION COMMISSION**

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