

NAMIBIAN COMPETITION COMMISSION

**STATEMENT OF MERGER INFORMATION**

Competition Act, 2003 (Act 2 of 2003)

(Section 44, Rule 28)

**To:** The Competition Commission

**From:**

(Name of undertaking filing this statement)
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1. The undertaking filing this statement is:

The primary acquiring undertaking

The primary target undertaking

2. In a separate document, titled Schedule 2, provide the following information in the order listed in subparagraphs (a) to (h):

- (a) State the name and principal business address of the party filing this Notice.
- (b) State the name and principal business address of all undertakings directly controlling you.
- (c) List the name and principal business address of each undertaking directly or indirectly controlled by each undertaking referred to in subparagraph (b).
- (d) List the name and principal business address of each undertaking you directly or indirectly control.
- (e) If you are an acquiring party, and you or any of the undertakings controlling you are owned or controlled by historically disadvantaged persons as defined in section 1 of the Act, state the name(s) of the person(s) and the nature and extent of their ownership or control.
- (f) State your annual turnover in, into or from Namibia for your preceding financial year and the range of months covered by your financial year.
- (g) State the value of your assets in Namibia as of the end of your preceding financial year, and as of the date of the Merger Notice.
- (h) State your annual turnover in, into or from Namibia as of the date of the Merger Notice.

For office Use only:	Commission file number:	Date filed:
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**FORM 39 (Continue)**

3. In a separate document, titled Schedule 3, provide the following information in the order listed in subparagraphs (a) to (e):

- (a) Indicate whether the party filing this Notice is-
  - (i) acquiring assets, shares, or other interests;
  - (ii) selling assets, shares, or other interests;
  - (iii) acquiring and selling assets, shares, or other interests.
- (b) Indicate whether the transaction involves-
  - (i) foreign direct investment;
  - (ii) a management buy-out;
  - (iii) a buy-back of shares.
- (c) Describe the merger, including the parties to the transaction; the assets, shares, or other interests being acquired; whether the assets, shares, or other interests are being purchased, leased, combined or otherwise transferred; the consideration; the contemplated timing for any major events required to bring about the completion of the transaction; and the intended structure of ownership and control of the completion of the merger.
- (d) Unless you have submitted a report addressing the issues listed below, please provide the following details:
  - (i) the estimated market shares of the merging parties and their competitors;
  - (ii) information concerning barriers to entry, such as regulatory requirements, capital requirements and sunk costs, the time it will take for potential entrants to enter the market, the names and contact details of entrants to the market during the past three years;
  - (iii) information concerning import competition, such as existing import duties;
  - (iv) countervailing power (customers or suppliers).
- (e) If you are relying on a "failing undertaking defence", please include the following information:
  - (i) financial information demonstrating that the undertaking will be unable to meet its financial obligations in future;
  - (ii) information concerning efforts taken to elicit reasonable alternative offers;
  - (iii) information indicating that the failing undertaking would reasonably be expected to exit the market unless the merger is implemented.

4. In a separate document, titled Schedule 4, provide the following information in the order listed in subparagraphs (a) to (e):

- (a) Identify each product that you or another acquiring undertaking (or target undertaking, if applicable) sell, and each service you or that other undertaking provide in, into or from Namibia. In addition, identify any products or services that you believe are considered by buyers as reasonably interchangeable with, or a substitute for, a product or service provided in, into or from Namibia by another party to the merger. Use the 5 digit standard industrial codes to identify products, if possible.
- (b) For each identified product or service, state the geographical area(s) in Namibia in which you sell.

- (c) For each identified product or service, identify, and provide contact details for the five producers or providers in each identified geographic area with the largest estimated turnover in value, and their estimated share of the total turnover during the last full 12 months.
- (d) For each identified product or service, state your turnover in each identified geographic area during the last full 12 months.
- (e) For each identified product or service, identify and provide contact details for your five customers in each identified geographic area with the largest aggregate purchases in value during the last full 12 months.

5. In a separate document, titled Schedule 5-

- (a) state the name of any other acquiring undertaking (or target undertaking, if applicable), that sells to you;
- (b) identify each product or service sold;
- (c) for each such product or service, show the value of that product or service sold during your preceding financial year.

**Certification of Accuracy:**

I, \_\_\_\_\_, have prepared, or supervised those who prepared, this Statement of Merger Information.

To the best of my knowledge, the information contained in this document, and the attachments to it, is true, correct and complete in terms of the Act and Rules, except to the extent that I have indicated-

- (a) that requested data is not available in books or records, and reasonable estimates have been used instead; or
- (b) complete information has not been provided because it is unavailable, in which case I have attached an affidavit sworn by me, explaining why the information is unavailable.

I understand-

- (a) that it is an offence in terms of the Act to provide false information to the Commission in any manner, including in these documents; and
- (b) that section 63 of the Act provide for a penalty of a fine, or imprisonment, of both, if I am found guilty of knowingly providing false information to the Commission.

**Name and title of person authorised to sign:**

\_\_\_\_\_

**Authorised Signature:**

**Date:**

**Please note:**

1. Attach to this Form the following items-
  - (a) the most recent version of all documents constituting the merger agreement;
  - (b) each report or other document assessing the transaction with respect to competitive conditions;
  - (c) any document, including minutes, reports, presentations and summaries, prepared for the Board of Directors regarding the transaction;
  - (d) your most recent business plan.
2. If any required information is not available, you must attach a sworn affidavit explaining why that information is unavailable.
3. Approval or conditional approval of a merger may be revoked if it is subsequently discovered that this statement of Information is not accurate.
4. Until the Commission has reached a decision concerning the merger, you must submit any revised or final version of each document referred to in paragraph 1 above, as it becomes available.
5. When describing the merger, please indicate any relevant facts concerning the impact of the merger on employment, or other public interest issues contemplated in section 47(2)(a) to (h) of the Act.
6. You may include any other relevant information that you want the Commission to consider.
7. Approval or conditional approval of a merger may be revoked if it is subsequently discovered that this Statement of Information is not accurate.
8. Generally, information relating to this merger is not part of the public record while the Commission is considering the merger.
9. You have a right to identify information that you believe is confidential, by completing Form 1 and submitting it with this Statement.
10. If any required information is not available, please attach a sworn affidavit explaining why that information is unavailable.