

not to implement the transaction in which case none of the conditions in this document would be of force and effect;

- 4.1.2 Within 3 (three) months of the Implementation Date, and thereafter bi-annually, with subsequent compliance for a period of 5 (five) years until the expiry of the conditions; and
- 4.1.3 During the reporting periods, the Commission may request that the Acquiring and Target Undertakings provide it with any information that it requires to confirm compliance with the Conditions.

5. GENERAL

- 5.1 The Acquiring Undertaking shall circulate a copy of the Conditions (i.e. this Annexure A only) to their respective employees within 10 (ten) days of the Approval Date.
- 5.2 As proof of compliance, a senior Director of the Acquiring Undertaking 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.
- 5.3 In monitoring these conditions, the Commission shall be entitled to request a visit at any site and/or facility under the control of the Merged Undertaking and/or Acquiring Undertaking.
- 5.4 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 –
- (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.
- 5.5 All correspondence in relation to the Conditions shall be submitted to the following email address: leena.shikongo@nacc.com.na; johannes.ashipala@nacc.com.na; and marelize.bock@nacc.com

**A. P. ITHINDI
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 510

2025

NOTICE OF DETERMINATION MADE BY THE COMMISSION
IN RELATION TO THE PROPOSED MERGER:
WHALE ROCK CEMENT (PTY) LTD // SCHWENK NAMIBIA (PTY) LTD

CASE NO.: 2025FEB0004MER

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

1. The Commission received notification of the abovementioned proposed merger on **17 February 2025**.
2. Note that the Commission has decided to prohibit the proposed merger.
3. The reasons for the prohibition of the proposed merger are as follows:
 - 3.1 The proposed merger is a merger to monopoly, with significant unilateral effects specifically but not limited to: removal of an effective competitor, non-existence of countervailing buyer power and lack of import competition. The aforesaid is highly likely to render the merged undertaking market power, thereby significantly impeding effective competition by enabling the merged entity to act independently of market forces, with the likely outcome being higher prices, reduced output and quality, and limited choice for downstream customers with negative ripple effects of entire value chain including but not limited to increased cost of housing and infrastructural projects and the economy at large. Therefore, the transaction was found likely to substantially lessen or prevent competition in the relevant market as contemplated in section 47(2) (a) of the Act, as well as affect the construction sector negatively as envisioned in terms of section 47(2)(d).
 - 3.2 The implementation of the proposed merger is highly likely to lead to the acquisition and strengthening of a dominant position in the relevant market, as contemplated in section 47(2)(b) of the Act.
 - 3.3 There were no concrete benefits that would outweigh the detrimental effects that will result from the implementation of the proposed merger as contemplated in section 47(2)(c) of the Act.
 - 3.4 The implementation of the proposed merger was found to have a negative effect on employment due to job overlaps as contemplated in section 47(2)(e).
 - 3.5 Barriers to entry in the relevant market are high and it is not likely that a small undertaking, in particular small undertakings owned or controlled by historically disadvantaged persons, to gain access to or be competitive in the relevant market as contemplated in section 47(2)(f) of the Act.
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
