



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.00

WINDHOEK - 24 June 2011

No. 4744

CONTENTS

Page

GOVERNMENT NOTICE

No. 93 Notice of application for review of decision of Commission in relation-to proposed merger 1

Government Notice

MINISTRY OF TRADE AND INDUSTRY

No. 93

2011

NOTICE OF APPLICATION FOR REVIEW OF DECISION OF COMMISSION IN RELATION TO PROPOSED MERGER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 49(2), Rule 32(1))

URAMIN NAMIBIA (PTY) LIMITED T/A AREVA RESOURCES
NAMIBIA // ERONGO DESALINATION COMPANY (PTY) LIMITED
CASE NO.: 2010NOV0051MER

1. Please take notice that the Commission has on 9 February 2011 conditionally approved the proposed merger between Uramin Namibia (Pty) Limited trading as Areva Resources Namibia and Erongo Desalination Company (Pty) Limited.
2. Notice is hereby given that I have on 13 May 2011 received an application from the firm Engling, Stritter & Partners, in terms of Section 49(1) of the Competition Act, 2003 (Act No. 2 of 2003), requesting for review of the decision of the Commission in relation to the merger concerned.
3. The nature of the review is to review the conditions that were imposed on the proposed merger. The Commission imposed the following conditions in its determination:

3.1 The first condition stipulates; “The merging parties obtain a permit/license from the Ministry of Agriculture, Water and Forestry to enable them to supply bulk water.”

The above condition is challenged on the basis that;

- i. No legislation exists in terms of which such application can be made;
- ii. No legislation exists in terms of which the Ministry can grant such permission;
- iii. It is not necessary to obtain such a permit to enable the merged entity to supply bulk water. It is so permitted by the Constitution;
- iv. No legislation exists in terms of which the right to trade in sea water is limited;
- v. The condition does not relate to the competitive outcome of the merger, as it is not related to the objects of the Act; and
- vi. The condition is unauthorized in terms of Section 47 of the Competition Act.

3.2 The second condition states that the merger parties should ensure that the quality of the water from the desalination plant is fully compliant to the Namwater model of quality for bulk water supply and not compromise it.

This condition is challenged on alleged grounds that it does not relate to competition law and that it is unrelated to the competitive outcome of the merger.

3.3 The final condition stipulates that “the water tariffs to be charged by the merging parties should be based on the outcome of the negotiations between Namwater, the Ministry of Agriculture, Water and Forestry and the merging parties. The outcome of the negotiations should ensure that the public interest is protected with regard to the pricing of bulk water supply from the desalination plant.”

The merger parties challenge this condition on the basis that;

- i. It assumes a definite outcome of the negotiations. It may be impossible for the merged entity to comply with the condition as Namwater and the Ministry may never be satisfied with the pricing.
- ii. The condition does not concern the competitive effect of the merger itself and is not based on the power of the Commission as envisaged in Section 47 of the Act.
- iii. Further that the Commission transgressed one of the fundamental principles of the Competition Act, as instead of reducing the possible distortion caused by the abuse of dominant position of Namwater in the water market, the condition enhances it.

4. Interested parties are invited to make written submissions, within 30 days after the date of this notice, to me in regard to any matter to be reviewed.

H. GEINGOB
MINISTER OF TRADE AND INDUSTRY

Windhoek, 10 June 2011