Namibian Competition Commission

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Mr Pieter Horn
Group Head: Legal, Risk & Compliance
Trustco Group Holdings Limited
Trustco House, 2 Keller Street
Windhoek, Namibia

By email: PieterH@tgh.na

29 July 2026

Dear Mr Horn,

RE: ADVISORY OPINION: VOLUNTARY DISCLOSURE AND REQUEST FOR GUIDANCE UNDER CHAPTER 4 OF THE COMPETITION ACT 2 OF 2003 – POSSIBLE UNNOTIFIED ACQUISITION OF CONTROL OF TRUSTCO GROUP HOLDINGS LIMITED

A. INTRODUCTION & OVERVIEW OF THE CONTEMPLATED TRANSACTIONS

1. On 15 July 2026, the Namibian Competition Commission ("the Commission") received missive from Trustco Group Holdings Limited ("Trustco"). On 16 July 2026, following clarify query from the Commission, Trustco informed the Commission that it in essence sought an advisory opinion from the Commission on the events relayed in its missive.

2. The submission starts, Trustco is a public company incorporated in the Republic of Namibia, with registration number 2003/058, and with its registered office at Trustco House, 2 Keller Street, Windhoek. Its shares are listed on the Namibian Stock Exchange (share code TUC) and, by way of a secondary listing, on the JSE (share code TTO).

3. The submission continues that, Trustco addresses the communication to the Commission proactively, in good faith and out of an abundance of caution, in order to bring to the Commission's attention conduct on the part of certain of its shareholders which, if implemented, may give effect to a change of control of Trustco capable of constituting a notifiable merger in terms of Chapter 4 of the Competition Act 2 of 2003 ("Competition Act"), and which has not been notified to, or approved by, the Commission.

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4. Trustco makes the disclosure in its capacity as the undertaking that is the target of, and that opposes, the conduct of the shareholders.

5. By a Sale and Conversion Agreement concluded in April 2024 (as amended by five addenda) ("the SCA"), Trustco agreed to acquire the 11.35% interest of Riskowitz Value Fund LP ("RVF") in Legal Shield Holdings Limited ("Legal Shield Holdings") in exchange for the issue to RVF of 400 000 000 new Trustco shares in two equal tranches. The transaction was placed before, and approved by, Trustco's shareholders on the express basis that it would not result in any change of control of Trustco, whether *de jure* or *de facto*, and was deliberately structured below the relevant thresholds so as not to constitute a notifiable merge. The first tranche of 200 000 000 shares was issued to RVF.

6. On 19 November 2025, RVF lodged a requisition under sections 189 and 228 of the Companies Act 28 of 2004 ("Companies Act"), calling for a general meeting to remove every incumbent director of Trustco and replace them with its nominees. That requisition was signed by Mr Sean Riskowitz expressly on behalf of RVF, of Riskowitz Capital Management LLC ("RCM") and in his personal capacity.

7. A requisition meeting took place on 16 February 2026, but no valid vote was taken on the proposed resolutions, and the board of Trustco remains intact.

8. The 200 000 000 shares issued to RVF are subject of pending arbitration proceedings, in which Trustco contends that the SCA has been cancelled and seeks restitution and rectification of the share register. RVF disputes that position. Trustco mentions the arbitration only for completeness, and nothing in the request is intended to affect those proceedings.

9. On 11 June 2026, RCM lodges a fresh requisition under section 189 of the Companies Act, again seeking the removal of every incumbent director of Trust and their replacement nominees. That requisition is signed by the same Mr Sean Riskowitz, on behalf of RCM. RCM asserts that it is a shareholder separate from RVF, holding approximately 10.35% of the voting share capital; it records that shareholders representing approximately 33.73% of the eligible voting capital have given irrevocable undertakings to support the proposed resolutions, bringing indicative support to approximately 44.53%.

10. Trustco proceeds, in terms of section 3, the Competition Act applies to all economic activity within Namibia, or having an effect within Namibia. Trustco is a Namibian public company whose governance and direction constitute economic activity within Namibia.

11. In terms of section 42 of the Competition Act, a merger occurs when one or more undertakings acquire or establish control over the whole or part of another undertaking, in any manner. Apart from the fact that Trustco apprehends that "control" for this purpose extends beyond nominal shareholding to the ability to appoint or remove a majority of the directors of an undertaking, or otherwise to materially influence its policy, the stance now adopted by Mr Riskowitz and his entities, is that they (despite the fact that the previous SCA transaction was deliberately structured below the relevant threshold so as not to constitute a notifiable merger or the transfer of control) indeed attained "control" as a result of the SCA. In this sense, (and despite the fact that Trustco does not share this erroneous view) – as they submit, Mr Riskowitz and his entities now seem to "implement" the SCA, *ex post facto* as if it indeed constituted a merger. Trustco proceeds that, Mr Riskowitz now approaches the SCA as if a merger indeed took place. However, such an interpretation of the SCA (even if only *ex post facto* and erroneously perceived to have been a merger by Mr Riskowitz and his entities) is nothing but an endeavour – through the requisition – to implement an unlawful merger; so the submission goes. Trustco is not prepared and will not allow such unlawful conduct to occur.

12. Trustco insists that, in any event, the removal and wholesale replacement of the entire board of Trustco with nominees of the requisitionist(s) would, if effected, confer decisive influence over the governance, strategic direction and affairs of Trustco. Such a step is therefore also capable of constituting the acquisition of control, and hence a merger, as contemplated in section 42 of the Competition Act.

13. It is submitted, in terms of section 43(3) of the Competition Act, no person, whether individually or jointly or in concert with any other person, may implement a merger unless it has been notified to and approved by the Commission (or the determination period has lapsed).

14. Trustco is concerned that, on RCM's own figures, RCM cannot procure the adoption of the proposed resolutions on its own votes. It follows that the removal and replacement of the entire board may be achieved only through the combined and concerted action of RCM, RVF and the parties who given the irrevocable undertakings – that is, persons acting jointly or in concert within the meaning of section 43(3). The fact that the requisition of 19 November 2025 was signed on behalf of RVF, RCM, and Mr Riskowitz personally and that the present requisition is signed by the same Mr Riskowitz, is relevant to that concern. No merger notification has, to Trustco's knowledge, been lodged in respect of the contemplated acquisition of control.

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15. In terms of section 44(1), each undertaking involved in a notifiable merger is required to notify the Commission and the merger may not be implemented before approval. Trustco submits, it is also not aware of any such notification having been made or any approval having been obtained.

16. Trustco accordingly discloses to the Commission:

    a) If the contemplated removal and replacement of its board constitutes a notifiable merger, it has not been notified to or approved by the Commission, and any implementation of it would contravene section 43(3) of the Competition Act; and
    b) On the same characterisation, Trustco – as the target undertaking – may itself bear a notification duty under section 44(1).

17. Trustco submits, it has not implemented, and opposes, any change of control. It has resisted the requisitions described, and reserves the right to seek appropriate relief in the High Court of Namibia to address any unlawful steps taken or to be taken for the implementation of any change of board of control pending the Commission's consideration of this matter.

18. Trustco thus requests that the Commission:

    a) Advise whether, in the Commission's view, the proposed removal and replacement of the entire board of Trustco by the requisitionist(s) (whether acting individually or jointly or in concert) constitutes a notifiable merger requiring notification and prior approval before implementation;
    b) Confirm what steps, notification or filing (if any) the Commission requires of Trustco or the requisitionist(s) in the circumstances set out above; and
    c) Consider engaging directly with the requisitionist(s) in respect of their obligations under section 43(3) and section 44(1) of the Competition Act.

B. THE LAW

THE ACT & REGULATIONS

19. The Competition Act defines an undertaking as follows:

    *"**undertaking**" means any **business carried on for gain or reward by an individual,** a body corporate, an unincorporated body of persons or a trust in the production, supply or distribution of goods or the provision of any service."*

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20. Section 3 of the Competition Act indicates that the Competition Act applies to all economic activity within Namibia or having an effect within Namibia, except –

   a) *Collective bargaining activities or collective agreements negotiated or concluded in terms of the Labor Act, 1992 (No. 6 of 1992);*
   b) *Concerted conduct designed to achieve a non-commercial socio-economic objective;*
   c) *In relation to goods or services which the Minister, with the concurrence of the Commission, declares, by notice in the Gazette, to be exempt from the provisions of this Act.*

21. The Competition Act defines goods and services as follows:

   "goods" does not include –
   a) *Agricultural commodities which have not undergone a process of manufacture; and*
   b) *Goods exempted under section 3(1)(c);*

   "services" does not include –
   a) *The performance of work under a contract of service; and*
   b) *Services exempted under section 3(1)(c);*

22. Section 42(1) of the Competition Act defines a merger as follows:
   *For the purposes of this Chapter, a merger occurs when **one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business** of another undertaking.*

23. In terms of section 42 (2) of the Act, a merger as contemplated in terms of section 42 (1) may occur in any manner including:

   (a) **purchase or lease of shares**, an interest, **or assets of the other undertaking in question**; or

24. In terms of section 42 (3) of the Act, a person controls an undertaking if that person -

   (a) Beneficially owns more than one half of the issued share capital of the undertaking;
   (b) Is entitled to vote a majority of the votes that may be cast at a general meeting of the undertaking, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking;

(c) Is able to appoint, or to veto the appointment, of a majority of the directors of the undertaking;

(d) Is a holding company, and the undertaking is a subsidiary of that company as contemplated in the Companies Act, 1973 (Act No. 61 of 1973);

(e) In the case of an undertaking being a trust, has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) In the case of an undertaking being a close corporation, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the close corporation; or

(g) has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).

25. Section 43 of the Act indicates that Chapter 4 applies to every proposed merger not falling within a class which the Minister, with the concurrence of the Commission, has determined and specified by notice in the Gazette to be excluded from the provisions of the Chapter.

26. Government Notice 307 of 21 December 2015 stipulates thresholds **("the merger thresholds")** which must be met for a transaction to be notifiable to the Commission. Section 2, sub-regulation 1 of the notice stipulates that Chapter 4 of the Competition Act does not apply to a merger if:

a) The combined annual turnover in, into or from Namibia of the acquiring undertaking and transferred undertaking is equal to or valued below N$ 30 million;

b) The combined assets in Namibia of the acquiring undertaking and transferred undertaking are equal to or valued below N$ 30 million;

c) The annual turnover in, into or from Namibia of the acquiring undertaking plus the assets in Namibia of the acquiring undertaking are equal to or valued below N$ 30 million.

2) In addition to sub-regulation 1, Chapter 4 of the Act also does not apply to a merger if –

(a) The annual turnover in, into or from Namibia, of the transferred undertaking is equal to or valued below N$ 15 million; and

(b) The asset value of the transferred undertaking in Namibia is equal to or valued below N$ 15 million.

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27. For the transaction to be notifiable, any combination of the acquiring group and the target undertaking's assets and turnover would need to be equal to or above N$ 30 000 000. 00 and the target undertaking's assets or turnover alone would need to be equal to or above N$ 15 000 000. 00.

28. The Notice defines acquiring undertaking as follows:

"acquiring undertaking" means the total of all undertakings that are acquiring undertakings in respect of a merger which include –

(a) any undertaking that, as a result of a transaction in any circumstances set out in section 42 of the Act, would acquire or establish direct or indirect control over the whole or part of the business of another undertaking;

(b) any other undertaking that has direct or indirect control over the whole or part of the business of an undertaking referred to in paragraph (a); and

(c) any other undertaking that is controlled by, or direct or indirect control over the whole or part of its business is held by, an undertaking referred to in paragraph (a) or (b)."

29. The term transferred undertaking is defined as follows:

"transferred undertaking" means the total of all the undertakings that are transferred undertakings in respect of a merger which include any undertaking, or the business or assets of the undertaking, that as a result of a transaction in any circumstances set out in section 42 of the Act –

(a) would become controlled by another undertaking; and
(b) any other undertaking that is controlled by, or the direct or indirect control over the whole or part of its business is held by, an undertaking referred to in paragraph (a).

C. LEGAL JURISPRUDENCE

i. Internal Restructuring

30. In determining whether an internal restructuring gives rise to a notifiable merger, the Competition authorities focus primarily on whether the transaction results in a change in control. While majority control is a key focus, the Commission also scrutinises all shifts in control, particularly where external

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minority shareholders are involved. Even where the overall ultimate control remains unchanged, a transaction may be notifiable if it alters the control rights of external minority shareholders.

31. The issue of control was discussed in *Ethos*,[1] and specifically the issue of whether multiple firms can exercise control at the same time over a single undertaking. The Court reaffirmed the principle that a firm can be controlled by more than one person at the same time.[2] Although a shareholder may be deemed to have acquired by virtue of a majority stake, there could still exist factual 'joint control' at the same time. This case noted the *Distillers* case where the Court rejected an argument that there was only one type of control and that is ultimate control. The Court held that such interpretation is not mandated by the express words of section 12 (1).

32. It was further stated that:

"On Ethos' approach, what was required to do in merger control is to identify who that controller is, whether sole or joint and then determine whether a given acquisition will alter that scenario. Yet this is not how the Act reads, nor how it has been interpreted by the Competition Appeal Court in the Distillers case, where the Court suggests that the Act provides for the possibility of a plurality of controllers. In the Distillers case, the Court rejected an argument that there was only one type of control and that is ultimate control."

The Court found that such an interpretation is not supported by the plain wording of section 12(1). It further held that:

"The wording of section 12(2) clearly contemplates a situation where more than one party simultaneously exercises control over a company. This situation can be illustrated with the following example: A beneficiary owns more than half of the issued share capital of the firm. He concludes an agreement with B in order that the latter may run the business. B agrees provided that he obtains control over the appointments to the Board of Directors as well as senior staff and marketing policy. In such a situation, A would control the firm as defined in terms of section 12(2) (a) and B would exercise control as defined in terms of section 12(2)(g). In short while A would have ultimate control, B would have control of a sufficient kind to bring him within the ambit of control as defined in section 12."

[1] *Ethos Private Equity Fund IV and The Tsebo Outsourcing Group (Pty) Ltd* Case No: 30/ LM/ Jun03.

[2] https://www.compcom.co.za/what-is-acquisition-of control/#:~:text=2.%20Ethos%20Private,the%20same%20time.

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33. Furthermore, *Ethos* sets out the following principles regarding the assessment of control:

"Merger policy is not confined to an assessment of control via the legal form, the Act recognises that control is not confined to exercise through the same legal form and that a firm can be controlled by another's economic or commercial leverage, because of this, the legislature recognizes the possibility of the separation of the economic and 'political' benefits of ownership and so provided for each in section 12(2) through subsection (12)(2)(a) and (d) (ownership) and 12 (2)(b) and (c) (voting rights). But it also had to go beyond recognizing even these two traditional company law forms of control and provide for control over other entities 12(2)(e) trusts and 12(2)(f) close corporations. It went further still, recognising that even these instances may be deficient in capturing all notions of control and so provided a catch all in 12(2)(g). Notwithstanding subsection (g), the Court has held that the list is non-exhaustive recognizing that control is too elastic a notion to confine to a closed list. In so doing it held that the legislature has instanced separate notions of control". [3]

ii. Single Economic Unit

34. In competition regulation, the single economic-entity doctrine means that the transfer of a business or part of a business from one entity to another within a corporate group would not constitute a merger between undertakings. The obvious consequence of this would be that the merger control requirements stipulated in competition law would not apply to the transaction.[4] However, one of the peculiarities of the South African (and Namibian) merger control regime is that it applies to the establishment or acquisition of direct and indirect control by one or more firms over the whole or part of the business of another.[5] Consequently, while an intra group transaction may not cause an establishment or an acquisition of ultimate (indirect) control, it may result in a change of direct control by one entity over the business of another entity. [6]

35. The approach to interpretation was reformulated in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,[7] which adopted a more modern, contextual method of interpreting statutes and other texts, as follows:

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[3] *Ethos* para 32.

[4] Mackenzie, N (et al) the single-economic entity doctrine in south Africa and its implication for competition policy.

[5] *Supra* (see note 2).

[6] *Supra* (see note 4).

[7] *Samukata v The Ministry of Safety and Security: Hon. Frans Kapofi* (HC-MD-CIV-ACT-OTH-2022/02129) NAHCMD 785 (4 December 2023) at para 32.

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"Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighted in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used."

36. The above dictum was subsequently endorsed by the *Namibian Supreme Court in Total Namibia (Pty) Ltd v OBM Engineering and Petroleum Distributors*[8].[9]

iii. Shareholders v Directors

37. The leading authority can still be drawn from *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame,*[10] where the Court found that, where a company's articles vest management powers in directors, shareholders in general meeting cannot usurp those powers merely by passing an ordinary resolutions. Directors derive their powers from the company's constitutive documents, and shareholders cannot direct the board how to exercise those powers unless acting through the procedure provided in those documents. [11]

38. In South African literature, the clearest authority on this exposition can be found in section 66(1) of the Companies Act 71 of 2008.[12]

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[8] *Total Namibia (Pty) Ltd v OBM Engineering and Petroleum Distributors CC* 2015 (3) NR 733 (SC) para 18.

[9] *Samukata v The Ministry of Safety and Security: Hon. Frans Kapofi* (HC-MD-CIV-ACT-OTH-2022/02129) NAHCMD 785 (4 December 2023) at para 33.

[10] *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34 (CA).

[11] See also *Shaw v Shaw* [1935] 2 KB 113.

[12] "The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise."

39. The Namibian Companies Act 28 of 2004, makes no such specific award. Instead, the legislature leaves the question to the company, and the directors' management authority is primarily constitutional (from its founding documents), although it assumes the existence of directors and regulates their appointment and duties.

D. APPLICATION OF THE LAW TO THE FACTS

40. The Commission records, from the onset; in the absence of any submission as to the monetary thresholds, it is accepted that, should the jurisdiction of the Commission be established, the applicable monetary thresholds are met.

41. Trustco is an investment entity headquartered in Windhoek, Namibia, that manages a diverse portfolio of investments spanning the insurance, real estate, micro-finance, education and mining sectors.

42. Legal Shield Holdings is Trustco's 80% owned investment entity and is the holding company of Trustco Insurance Limited, Trustco Life Limited, and Trustco's real estate portfolio.

43. Shareholders were advised on 24 November 2017 that Trustco and RVF entered into a sale-of-share agreement in which RVF acquired 20% (twenty percent) of Legal Shield Holdings for a cash consideration of N$1,2 Billion. Shareholders approved the transaction on 15 May 2018. The full cash consideration was received, and the transaction was implemented. Subsequently, RVF transferred 8.65% of its interest in Legal Shield Holdings to Notre Dame. Subsequent to that, RVF and Trustco entered into the Agreement in terms whereof Trustco would acquire the 11.35% interest in Legal Shield Holdings as set out in the terms of the Transaction.[13]

44. The rationale for the transaction, at the time of conclusion, was said to be:[14]
    44.1. The Transaction increases the net asset value of Trustco.
    44.2. The Transaction allows Trustco to directly benefit from anticipated post-Covid capital growth, improved liquidity and buyer demand in the Namibian Property Market.
    44.3. The Transaction simplifies Trustco's investment portfolio, as it increases Trustco's investment in Legal Shield Holdings, and positions Trustco to raise capital for growth more efficiently.
    44.4. Trustco is able to re-acquire the Sale Shares at a substantial discount to when the Sale

[13] Para 4.1 of the Circular to Trustco Shareholders, p.19.

[14] Para 4.2 of the Circular to Trustco Shareholders, p.19.

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Shares were initially sold, and Trustco shares are being issued at a premium to the current market price.

45. *Ex facie* the circular, the parties to the transaction further recorded a separate rationale for the commercial arrangement. The parties proceed:[15]

    45.1. In order to avoid a change in control of the Issuer, the Parties of the Transaction have entered into a commercial arrangement in terms of which the Payment Shares are issued in tranches. The commercial arrangement is necessary as it attempts to safeguard against the occurrence of a change of control event of the Issuer. The detrimental consequence of a change of control event would be (i) a change in control requires Competition Commission approval, (ii) a change in control requires exchange control approval from the Bank of Namibia, (iii) it is against the fund mandate of the Seller to control an investment, and (iv) the funding arrangements of the Purchaser prohibits a change in control, which would constitute an event of default.

    45.2. The total dilutionary effect of the Agreement will occur over time, not on the first day after the Closing of the Transaction.

46. Trustco, in its submission provides to the Commission the following breakdown of authorized and issued share capital, before and after the execution of the SCA:

	Column 1	**Column 2**
	Before the Agreement	**After the Agreement**
Authorized Share Capital		
Number of shares of NAD 0.23 each (000's)	2 500 000	2 500 000
Share Capital (NAD '000)	575 000	575 000
Issued Share Capital		
Number of shares of NAD 0.23 each (000's)	992 174	1 392 174
Number of treasury shares of NAD 0.23 each (000's)	47 705	47 705

47. Trustco also provides to the Commission that, as at the Last Practicable Date (Thursday, 21 November 2024) – to its knowledge, the following Shareholders, other than Directors and their Associates, were,

[15] Para 4.3.1. – 4.3.2 of the Circular to Trustco Shareholders, p.20.

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directly or indirectly, beneficially interested in 5% or more of the issued share capital of Trustco before the transaction:[16]

Shareholder	Direct Shareholding	Indirect Shareholding	Total Shares Held	Shareholding %
Dr Q Van Rooyen	111 980 000	265 220 060	377 200 060	39.94%
Riskowitz Value Fund (RVF)	222 267 861		222 267 861	23.53%
Notre Dame	120 604 762		120 604 762	12.77%
Germinate SL Ltd	85 416 666		85 416 666	9.04%
Total	540 269 289	265 220 060	805 489 349	85.28%

48. Trustco also provides to the Commission that, the following Shareholders, other than Directors and their Associates, were, directly or indirectly, beneficially interested in 5% or more of the issued share capital of Trustco after the transaction:[17]

Shareholder	Direct Shareholding	Indirect Shareholding	Total Shares Held	Shareholding %
Dr Q Van Rooyen	111 980 000	265 220 060	377 200 060	28.06%
Riskowitz Value Fund (RVF)	622 267 861		622 267 861	46.28%
Notre Dame	120 604 762		120 604 762	8.97%
Germinate	85 416 666		85 416 666	6.35%
Total	940 269 289		1 205 489 349	89.66%

[16] The percentage shareholding was calculated based on Shares in the issue of 944,469,726 as at the Last Practicable Date which number of shares was calculated by subtracting 47,705,048 treasury shares from the total issued number of Shares of 992,174,774.

[17] The percentage shareholding was calculated based on Shares in the issue of 992,174,774, which is the number of shares currently in issue, plus 400,000,000 shares to be issued, subtracting 47,705,048 treasury shares from the total number of issued shares after the Transaction of 1,344,469,726.

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49. The Directors' Interest in Securities, as the Last Practicable Date, the direct and indirect beneficial interests of the Directors (including any Associates of the Directors and any director of the Board who resigned during the 18 months preceding the Last Practicable Date) in the share capital of Trustco before the transaction was:[18]

	Direct beneficial	Indirect beneficial	Total number of shares held	Percentage shareholding
Abrahams, Floors Jacobus	2,451,518		2,451,518	0.26%
Geyser, Winton John	124,415		124,415	0.01%
Heathcote, Raymond	1,354,802		1,354,802	0.14%
Taljaard, Renier Jacobus	50,151		50,151	0.01%
Van Den Heever, Janene	119,915		119,915	0.01%
Van Rooyen, Quinton, Dr	111,980,000	265,220,060	377,200,060	39.94%
Grand Total	116,080,801	265,220,060	381,300,861	40.37%

50. The entire indirect beneficial shareholding of Dr Q van Rooyen is held through Associates to Dr Q van Rooyen, as shown below, before the transaction:

Associate	Number of Trustco Shares held	Shareholding %
Next Capital[19]	265,220,060	28.03%
Othinge Investments[20]	5,000,000	0.53%

[18] Based on Total Issued shares as at 12 September 2024 being 992,174,774 less Shares held in treasury of 47,705,048.

[19] Next Capital is a Namibian company of which Dr van Rooyen is the sole shareholder.

[20] Othinge Investments is a Namibian company of Ms C van Rooyen, the wife of Dr van Rooyen.

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51. The Directors' Interest in Securities, the direct and indirect beneficial interests of the Directors (including any Associates of the Directors and any director of the Board who resigned during the 18 months preceding the Last Practicable Date) in the share capital of Trustco after the transaction was:[21]

	Direct beneficial	Indirect beneficial	Total number of shares held	Percentage shareholding
Abrahams, Floors Jacobus	2,451,518		2,451,518	0,18%
Geyser, Winton John	124,415		124,415	0,01%
Heathcote, Raymond	1,354,802		1,354,802	0,10%
Taljaard, Renier Jacobus	50,151		50,151	0,00%
Van Den Heever, Janene	119,915		119,915	0,01%
Van Rooyen, Quinton, Dr	111,980,000	265,220,060	377,200,060	28,06%
Grand Total	116,080,801	265,220,060	381,300,861	28.36%

52. The entire indirect beneficial shareholding of Dr Q van Rooyen is held through Associates to Dr Q van Rooyen, as shown below, after the transaction:

Associate	Number of Trustco Shares held	Shareholding %
Next Capital	265,220,060	19.73%
Othinge Investments	5,000,000	0.37%

53. At the time of the conclusion of the SCA, Trustco was of the opinion that, the acquisition of an additional 11.35% interest, while not fundamentally changing Trustco's control (as it already holds majority ownership), does enhance Trustco's strategic influence and economic stake in meaningful

[21] Based on Total Issued shares as at 12 September 2024 being 992,174,774 plus 400,000,000 shares to be issued for the Transaction less Shares held in treasury of 47,705,048

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ways. By increasing its share, Trustco will be entitled to a larger portion of Legal Shield Holdings' earnings, directly benefiting its shareholders.[22]

54. In consideration of the Notice of General Meeting, and Voting Rights, the parties agreed, all shares rank *pari passu* with each other and at the General Meeting, every Shareholder present or represented by proxy shall have one vote for every share held.[23]

55. It should be stated that, the Commission does not and will not opine on whether the execution of the SCA indeed permits the change of control. Evident from the submission from Trustco is that, that specific question forms the gravamen of the dispute between the parties.

56. *Ex facie* the Circular to Trustco Shareholders,[24] Dr Q van Rooyen, is the managing director and largest shareholder of Trustco with 39.94% shareholding before the Transaction.[25]

57. Furthermore, Legal Shield Holdings, with registration number 2006/399, is defined as a company incorporated in accordance with the laws of Namibia, 80% owned by Trustco and 11.35% owned by RVF, and 8.65% owned by Notre Dame.

58. It is also noted that, in public companies, ownership is spread among shareholders, but control is often held by a board of directors. Ownership is often proportional to the number of shares they hold. However, the day-to-day control and management of the company is not in the hands of the shareholders. This often times rests with the board of directors, appointed by the shareholders, who exercise control over the company. The board of directors is responsible for making strategic decisions, setting company policies, and overseeing the company's overall operations. They are accountable to the shareholders and hold a fiduciary responsibility.

59. The NamCode in Principle C2 – 1, para 1.1. provides, companies should be headed by a board that directs, governs and is in effective control of the company.

60. Whether or not control has been acquired by a minority shareholder is a factual question which must be determined on a case by case basis and all the rights that may be exercised by the minority

[22] Clause 9, Conclusion, of the Circular to Trustco Shareholders, p.25.

[23] Clause 18.2 of the Circular to Trustco Shareholders, p.31.

[24] Circular to Trustco Shareholders, Date of issue: 4 December 2024, for a General Meeting of 7 January 2025.

[25] Definitions and Interpretations of the Circular to Trustco Shareholders, p.11.

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shareholder will have to be considered in combination with each other in order to determine whether such a minority shareholder is able to influence strategic decisions and commercial strategies of a target firm.[26] Transactions which result in the acquisition and/or loss of minority shareholder protections are likely to be of concern to the Commission particularly if the transaction meets the requisite merger notification thresholds.[27]

61. The ultimate determinative factor is the consideration of material influence, where the question of control is not clear cut.

62. Considering the SCA, the Trustco and RVF agreed specifically:[28]

62.1. "The Purchaser and the Seller agree not to allow a *de facto* takeover of the Purchaser by the implementation of this Agreement. The Seller herewith provides the chairperson of the Purchaser with an irrevocable instruction to vote in line with the status quo prior to the Restatement Instruction, on behalf of the shares obtained as part of this Agreement, as described in section 7.4 below.

62.2. The irrevocable instruction will remain in place until Next Capital (Pty) Ltd ("Next") and/or its associates can exercise 50 plus 1% (fifty plus one percent) or more of the voting rights of Trustco Group Holdings Limited. Once Next and/or its associates exceeds 50 plus 1% (fifty plus one percent) of the voting rights of Trustco Group Holdings Limited, the provisions of clause 7.3 and this clause 7.4 will fall away permanently, alternatively if the Company Secretary advises in writing that the voting rights have revested in the Seller, whichever event occurs first."

63. Further, the parties in the Addendum to the SCA ("First Addendum") agreed:

63.1. "By adding paragraph 7.6
In addition to Paragraph 7.3 and 7.4, the Seller warrants that it will not receive Payment Shares, exceeding 49.9% of the total issued shares (less treasury shares) of the Purchaser during the implementation of the Agreement."

[26] Competition Commission of South Africa. Draft Guidelines on Minority Shareholder Protections. Para 6.5, p. 16 – 17. Accessed at: https://www.compcom.co.za/wp-content/uploads/2025/12/Draft_Guidelines-on-Minority-Protections_1-December-2025_for-Public-comment.pdf.

[27] Competition Commission of South Africa. Draft Guidelines on Minority Shareholder Protections. Para 6.7, p. 17. Accessed at: https://www.compcom.co.za/wp-content/uploads/2025/12/Draft_Guidelines-on-Minority-Protections_1-December-2025_for-Public-comment.pdf.

[28] Clauses 7.3 – 7.4 of the SCA.

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64. What then follows is the Fourth Addendum to the SCA ("Fourth Addendum"), where the parties agreed, *inter alia*:

"**Whereas** the Parties entered into a Sale Agreement on 18 April 2024 ("Agreement"), an addendum to the Agreement dated 31 July 2024 ("Addendum") a second addendum dated 31 August 2024 ("Second Addendum"), and a third addendum dated 10 October 2024 ("Third Addendum"); and

Whereas the Parties wish to amend certain terms of the Agreement;

Now therefore the parties agree that:

2.

By deleting paragraph 7.3 in the Agreement.

3.

By deleting paragraph 7.4 in the Agreement.

4.

By deletion of paragraph 7.5 in the Agreement."

65. What is thus evident is that, as of 11 November 2024 at the conclusion of the Fourth Addendum, the parties agreed that the prohibition on *de facto* control and the irrevocable instruction to vote, became removed between the parties.

66. Great stock was placed before the Commission on Clause 4.5 of the Circular to Trustco Shareholders, restated below for ease of reference:

"4.5.1. The Seller will not be entitled to cede, assign, pledge or encumber the Sale Shares in any way from the Signature Date to the date of transfer thereof from the Seller to the Purchaser.

4.5.2. The Purchaser and the Seller agree not to allow a *de facto* takeover of the Purchaser by the implementation of this Agreement. In terms of the Namibian legislation, specifically the Competition Act, Act 2003 control relates to 50% plus 1 of the votes of the Company.

4.5.3. Trustco will not issue Payment Shares to the Seller, when such issue will be in excess of 49.9% of the total issued shares (less treasury shares). This will remain in place to ensure

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that there is no change in control - to ensure that the Competition Commission and Bank of Namibia exchange control approval would not be required. This requirement is further in line with the mandate prohibitions of the Seller that it is not allowed to control an investment."

67. The Date of issue of the Circular to Trustco Shareholders is 4 December 2024. As such, at the time the circular was issued, it was well within the knowledge of Trustco that pursuant to the Fourth Addendum – signed on 11 November 2024, the parties had the unequivocal intention to remove any prohibition of *de facto* takeover, and the irrevocable instruction to vote.

68. The European Union has recognised the "possibility of exercising", to mean that an acquisition of control might occur both with and without intention and it is enough having the possibility of exercising decisive influence to constitute control. In *Avesta II*,[29] it was settled that control could be acquired inadvertently as a result of the action of a third party. The essential question is whether the rights acquired are sufficient to confer control in the sense of "possibility of exercising decisive influence".

69. The Commission considers the question whether, a person acquires the ability to materially influence or control an undertaking. Namibian law does not expressly state that inadvertent acquisition constitutes control in the same way as the European Union case law, but the Commission considers the factual acquisition of control.

70. The Commission on 21 July 2026 directed query to your office regarding the conclusion of the Fourth Addendum dated 11 November 2024 (removing the provisions of the agreement between Trustco and RVF as it pertains to the *de facto* takeover and the irrevocable instruction to vote), and the Circular dated 4 December 2024, which again includes those provisions. On even date, your office informed the Commission that, the SCA (and Addenda), was made subject to the approval of the shareholders of Trustco. Additionally that, the approval was obtained, but subject to the condition that it will not result in the *de facto* change of control – as contained in the Circular. In the result, the approval was not unconditional, and which condition was accepted by Mr Riskowitz and his affiliate entities, knowing of the specific restriction placed on the shares in terms of Article 31 of the Articles of Association of

[29] Commission Decision of 9.6.1994, Case No IV/M.452.

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Trustco.[30] In the result, the attempt by Mr Riskowitz and his affiliate entities to replace the whole Board of Directors with his/their own nominees, constitutes a *de facto* change of control.

71. It seems apparent to the Commission that, the dispute between Trustco and RVF hinges, at least in part, on whether or not, the payment in the SCA afforded RVF the ability to exercise any control, which control RVF now seeks to exercise by removing wholly the current board of Trustco.

72. The Commission appreciates the submission by your office that the payment by shares to RVF/acquisition of additional shareholding to RVF, came subject to conditions, approved by the shareholders; which conditions include the proviso of no *de facto* change of control and irrevocable instruction to vote. However, this is not the end of the matter. It appears there may have been omission or oversight on this aspect, in that, the board of Trustco concluded the Fourth Addendum, without including same in the Circular to the Shareholders. It is also evident from the SCA that it was the clear intention of Trustco and RVF that any variation of the SCA shall be in writing.[31]

73. Irrespective thus of the submission from your office that the shareholders approved the SCA, subject to conditions, what is apparent from the documents before the Commission is that, by agreement – in written variation by the Fourth Addendum, those conditions were removed; and which removal seemingly is the basis upon which RVF seeks to now take control of Trustco, for the replacement of the board of directors.

74. The Commission will not opine on whether or not – in this instance, the intention was for the shareholders to approve the acquisition subject to conditions or not, but will merely consider the question on the competitive effect the transaction has in terms of the Competition Act.

75. Thus, insofar as RVF seeks to replace the whole board of Trustco, and should such an attempt proof successful – the reasonable conclusion would be that the payment of shares/acquisition of the

[30] Article 31 – "Votes of Members": Subject to any special terms as to voting upon which any share may be issued, and subject to the statutes, on a show of hands every member present in person at a general meeting, and every proxy and who is present at a general meeting, shall have one vote only, but upon a poll every member present in person or by proxy at a general meeting shall have one vote for every share held by him, and every share in respect of which he holds a proxy.

[31] Clause 11 of the SCA – "VARIATIONS TO BE IN WRITING": This Agreement shall constitute the whole agreement between the Parties hereto, and no variation, amendment, modification or waiver of any provisions hereof, or consent to any departure therefrom, shall in any event be of any force or effect unless confirmed in writing and signed by both Parties, and then such variation, amendment, modification, waiver or consent shall be effective only in the specific instance and for the purpose and to the extent for which such amendment was made or waiver was given.

vw

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additional shares by RVF in Trustco, afforded it control to able to affect change within Trustco; and which control would be consistent with section 42(3) of the Competition Act. Such a transaction should have been notified to the Commission, prior to its implementation, and the invariable consequence may be a contravention of the Competition Act in terms of section 43(3) and section 51; considering the economic separation of RVF and Trustco.

76. The Commission will, however, at this stage – in this advisory opinion, not make such a determination, considering the submission of your office that the SCA has been cancelled – subject to restitution and rectification of the share register. The Commission may still elect to pursue this matter at a later stage as a possible contravention.

77. As such, considering the question of the SCA and control are subject to *quasi-judicial* proceedings in arbitration, in the event, the second requisition of RVF succeed and the board of directors of Trustco are replaced, or a finding is made in arbitration that the SCA had not been validly cancelled, allowing for its implementation and exercise of control by RVF, the Commission may invariably find a contravention of the Competition Act occurred – or even that such contravention may have occurred, now subject to the cancelled SCA. As to the cancellation and arbitration proceedings, Trustco does not provide the Commission with any additional information.

78. In response to the specific queries posed by Trustco, restated below for ease of reference, the Commission responds as raised.

79. <u>Advise whether, in the Commission's view, the proposed removal and replacement of the entire board of Trustco by the requisitionist(s) (whether acting individually or jointly or in concert) constitutes a notifiable merger requiring notification and prior approval before implementation;</u>

79.1. For the reasons set out herein, the Commission is of the view that any implementation of the SCA affording RVF control to remove the board of directors of Trustco amounts to a change of control, and which transaction must be notified to the Commission prior to its implementation. Failure to notify the transaction to the Commission prior to its implementation, may result in a contravention finding of the Competition Act by the Commission.

80. <u>Confirm what steps, notification or filing (if any) the Commission requires of Trustco or the requisitionist(s) in the circumstances set out above; and</u>

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80.1. The provisions of the Competition Act, and the Rules made pursuant to the Competition Act apply without change.

80.2. Section 44(1) of the Competition Act provides that each of the undertakings involved must notify the Commission of the transaction. In the event Trustco (by its current board) accepts a change of control, such transaction must be notified, jointly or separately with Trustco as target undertaking, and the requisitionist(s) as the acquiring group. In the event the requisitionist(s) are able to exercise control by virtue of the SCA, and implement a change of control of the Board of Trustco, the requisitionist(s) remain the acquiring group, and with control over the operations of Trustco, would be able to notify on behalf of Trustco. Implementation by the latter route may amount to a contravention of the Competition Act for implementation prior to Commission approval.

81. Consider engaging directly with the requisitionist(s) in respect of their obligations under section 43(3) and section 44(1) of the Competition Act.

81.1. The Commission as competition regulator is independent and subject only to the Namibian Constitution and the law; and must be impartial and must perform its functions without fear, favour or prejudice.[32]

81.2. The matter raised in the request relate to internal governance, control, and operations of Trustco. These matters fall beyond the mandate of the Commission. The Commission does not intervene in shareholder disputes or involve itself in the operational and/or commercial management of undertakings, unless conduct exists within the scope of the Competition Act.

81.3. The Commission will thus not engage any party on the prompting of another. Considering the ongoing dispute between the shareholders, it may be incumbent on your office (on behalf of the shareholders) to circulate copy of this advisory opinion to all affected parties.

81.4. The Commission in the execution of its duties, specifically section 16(1)(f), as it relates to its responsibility to investigate contraventions of the Competition Act by undertakings andfor controlling mergers between undertakings, does issue contravention letters to any party suspected of a contravention or in anticipation of a transaction, as a cautionary note to notify a transaction. However, considering the engagement by the Commission and the Head of Legal for Trustco (and its shareholders) herein, the Commission considers the engagement as adequate notice.

[32] Section 4 of the Competition Act.

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E. CONCLUSION

80. The Commission reiterates that its mandate is confined to the application and enforcement of the Competition Act. It does not determine disputes concerning the validity, interpretation, or enforceability of commercial agreements, nor does it adjudicate shareholder or corporate governance disputes. Those matters properly fall within the jurisdictions of the courts, or other competent dispute resolution fora.

81. The Commission's opinion is therefore limited to the competition law implication arising from the facts presented. Should it ultimately be established that the implementation of the SCA, or any related arrangement, confers upon RVF the ability to exercise control over Trustco within the meaning of section 42(3) of the Competition Act, including the ability to appoint or remove the majority of Trustco's board of directors or otherwise exercise decisive influence over Trustco's affairs, such implementation would constitute a notifiable merger requiring the Commission's approval prior to implementation.

82. Conversely, if it is determined that no such control was acquired, or that the SCA was validly cancelled before any acquisition of control occurred, the Commission expresses no view on the rights and obligations of the parties arising from those arrangements, as those issues fall outside the statutory mandate of the Commission.

83. This advisory opinion should not be construed as determining the parties' contractual rights or outcome of the pending arbitration. It merely sets out the Commission's view in terms of the Competition Act, as it would apply to the acquisition of control, should the relevant factual and legal prerequisites ultimately be established.

84. Please take note that the above guidance is not intended as a substitute for independent legal advice, nor does it purport to alter or supersede the relevant provisions of the Competition Act as outlined. The advice is aimed at assisting in interpreting provisions of the Competition Act and to provide business guidance on the position that the Commission is likely to take in respect of certain transactions, agreements or practices.

85. This is a written opinion of the Commission's position in respect of a set of facts submitted by external parties. It is not binding on the Commission, and the Commission may change its position should there be any change in the relevant facts, and the advisory shall not apply to any other set of facts, not considered by the Commission. It furthermore remains the responsibility of each individual or entity

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to take reasonable measures to ensure compliance with the Competition Act by personally familiarizing themselves with the provisions of the Competition Act and any subordinate legislation issued in terms of the Competition Act.

86. Finally, all undertakings are reminded of their independent duty to ensure ongoing compliance with the provisions of the Competition Act and are encouraged to seek further guidance or legal advice where necessary.

Yours faithfully,

OFFICE OF THE CEO & SECRETARY TO THE COMMISSION
2026 -07- 29
NAMIBIAN COMPETITION COMMISSION

Vitalis Ndalikokule
CEO and Secretary to the Commission