

**In the large merger between:**

**Johnnic Holdings Limited**

**and**

**Fabcos Investment Holding Company Limited**

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**Reasons for Decision**

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**Approval**

1. The Competition Tribunal issued a Merger Clearance Certificate on 23 February 2005 approving without conditions the merger between the abovementioned merging parties. The reasons for approving the merger are set out below.

**Merging parties**

2. The ***primary acquiring firm*** is Johnnic Holdings Ltd (“Johnnic Holdings”), a public company listed on the JSE. None of its shareholders either directly or indirectly controls Johnnic Holdings.<sup>1</sup> Johnnic Holdings has more than 20 subsidiaries whom together with Johnnic are collectively referred to by the Commission) as the “Johnnic Group”.<sup>2</sup>

3. The ***primary target firm*** is Fabcos Investment Holding Ltd (“FIH”). Fabvest Investment Holdings Ltd (“Fabvest”) currently controls FIH. Fabvest owns 75% stake in FIH with the balance of 25% being held by Johnnic Holdings. Fabvest is in turn controlled by the Fabcos Trust (“Fabcos Trust”) (as to 90.125%).<sup>3</sup>

4. FIH currently controls 3 dormant companies, which are Fabfoods (100%); Fabtravel (Pty) Ltd (100%); and Fabao Investments (Pty) Ltd (75%); and 1 active company known as Censor SA (95%).<sup>4</sup>

5. FIH further has a non-controlling interest (of less than 50%) in:

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1 Its shareholders owning in excess of 5% include Old Mutual (13.00%); PIC (8.65%); RMB (6.86%); Metropolitan (6.60%); Coronation (6.19%); Liberty Group (5.15%); and Sanlam (5.04%) (See, pages 15 & 66 of the Record).

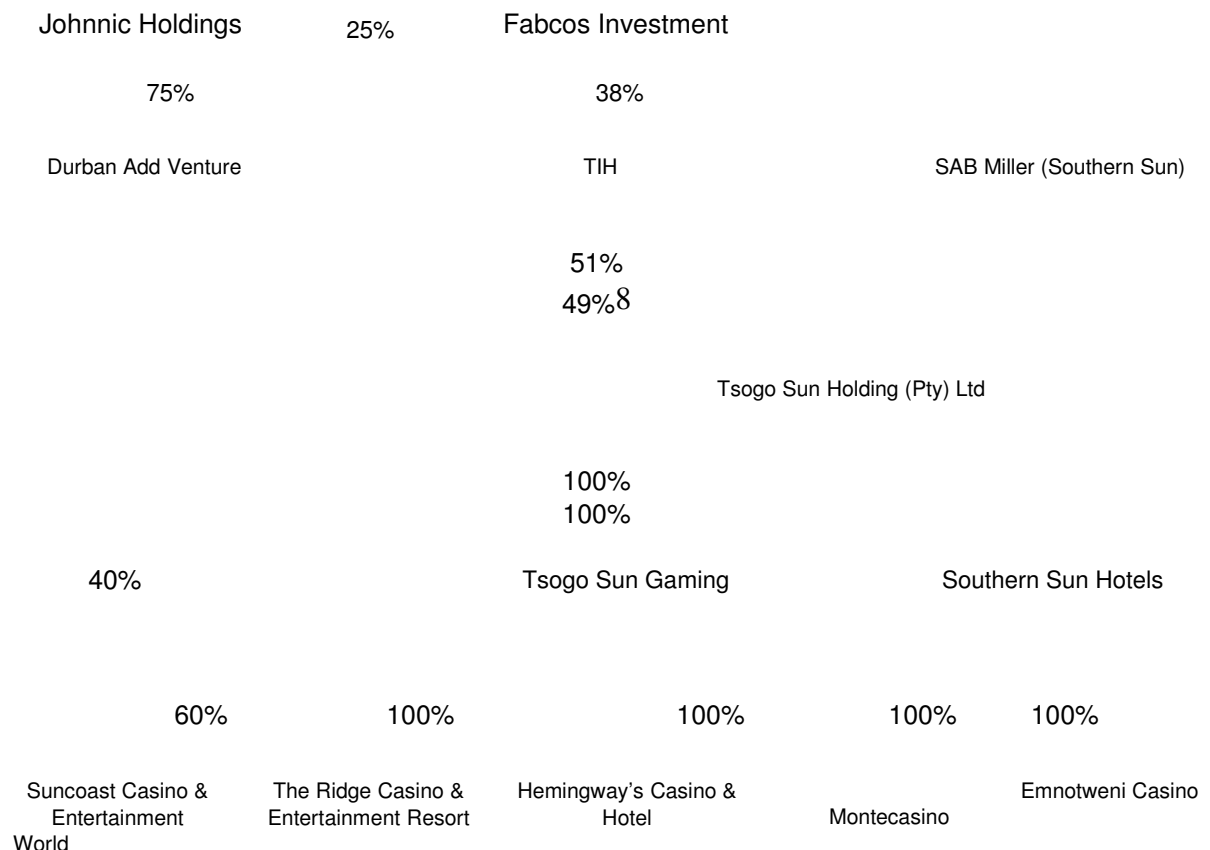
2 For Johnnic Group Structure, refer to page 203 (Annexure “A1”) of the Record.

3 Fabcos Trust also controls Fabchannel (Pty) Lytd (75%); Sata Marketing (Pty) Ltd (100%); Fabcos Institute of Entrepreneurship (Pty) Ltd (100%); and Fabphone (Pty) Ltd (50%).

4 Censor SA is a Liberian corporation, which in turn has a 95% interest in Anchor Yeast (Pty) Ltd, a company operating in Zimbabwe, producing yeast for the Zimbabwean market.

- Tsogo Investment Holding Co. (Pty) Ltd (“TIH”)<sup>5</sup> **(38%)**; and
  - Futurebank Ltd (“Futurebank”) (44%) – currently under liquidation.
6. The parties pointed out that pursuant to the acquisition of the 50% of the equity in FIH by Johnnic, FIH will transfer all interests in its portfolio firms save for its 38% share in TIH to Fabvest. Therefore post merger, FIH’s only interest will be a 38% stake in TIH.<sup>6</sup>

7. Below is a diagram which outlines the pre-merger shareholdings<sup>7</sup>:



<sup>5</sup> TIH’s shareholders are FIH (38%); the National Council of Trade Unions (“NACTU”) (32.7%); the National African Federated Chamber of Commerce & Industry (“NAFCOC”) (25%); African Renaissance (4%); and Patrice Motsepe (0.3%).

<sup>6</sup> As can be seen from the above diagram, TIH has a 51% share in Tsogo Sun Holdings (Pty) Ltd (“Tsogo Sun”), which in turn has a 100% shareholding in Tsogo Sun Gaming and Southern Sun Hotels. Tsogo Sun Gaming currently holds 5 casino licences, viz., Suncoast Casino & Entertainment World (Durban); the Ridge Casino & Entertainment Resort (Witbank); Hemingway’s Casino & Hotel (East London); Montecasino (Fourways - Johannesburg); and Emnotweni Casino (Nelspruit). It is important to note that Johnnic Holdings (through its subsidiary, Durban Add-Ventures (Pty) Ltd) holds 40% shares in Suncoast Casino & Entertainment whilst Tsogo Sun Gaming holds the balance of 60%.

<sup>7</sup> According to the parties, the merger would not result in any major changes to the pre-merger shareholdings, except that Johnnic Holdings would increase its 25% stake in Fabcos to 50% post-merger.

<sup>8</sup> This 49% reflects SAB Miller’s (Southern Sun) stake in Tsogo Sun Holding (Pty) Ltd.

## **The merger transaction**

8. The proposed transaction entails Johnnic Holdings acquiring an additional 25% of the issued share capital of Fabcos Investment Holdings from Fabvest, which will give it a 50% equity interest in FIH. Johnnic currently holds a 25% stake in FIH. The effect of the acquisition will be to confer upon Johnnic joint control over FIH.

9. It should be noted that the present transaction is only limited to Johnnic acquiring joint control with Fabcos. Should either party decide in future that it needs to cross the bright line for purposes of acquiring sole control then the transaction should be notified to the relevant competition authorities as and when it happens.<sup>9</sup>

## **Rationale for the transaction**

10. In December 2004, Johnnic announced that it would unbundle its entire shareholding in media and entertainment company, Johnnic Communications (“Johncom”), a step that would see it (Johnnic) changing focus. It further appeared that the holding company’s strategy going forward was to build up “critical mass” through value-adding investments in the hotels and gaming industry.<sup>10</sup>

## **What are the merging parties’ main activities?**

### The Primary Acquiring Firm

11. Johnnic Holdings is an investment holding company with interests in the media, **casino**, entertainment, exhibition, and property industries.<sup>11</sup> We will for purposes of our analysis focus on Johnnic Group’s interest (as well as those of the target firms) in the Casino and Gaming sector.

### Casino & Gaming

12. As reflected in the diagram above, Johnnic’s casino interests are conducted through Durban-Add Ventures Ltd. The Suncoast Casino is a new major development between Tsogo Sun Holdings (Pty) Ltd (60%) and Durban Add-Ventures (40%).<sup>12</sup>

### The Primary Target Firm

13. **FIH** was formed in 1997 to steer the commercial affairs of the Fabcos Trust. It was incorporated in 1995 as a special purpose vehicle specifically formed for purposes of acquiring shares and obtaining ownership stakes in corporate entities for the benefit and on behalf of the Fabcos members. The parties indicated that it was intended, after the establishment of Fabvest in 1997, that FIH would be ring-fenced

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9 See pages 13-14 of the transcript dated 23<sup>rd</sup> February 2005.

10 See Johnnic Holdings’ Board Minutes of 25 February 2004 at Page 307 of the Record.

11 For a detailed exposition of Johnnic’s primary activities, please refer to pages 365-366 of the Record.

12 Durban Add Venture is one of the subsidiaries of Johnnic.

to hold only the Fabcos Trust's casino interests. As alluded to above, FIH will, pursuant to this transaction, transfer all interests in its portfolio firms, save for its 38% share in TIH, to Fabvest. Therefore post-transaction, FIH's only interest will be a 38% stake in TIH, whilst Fabvest will assume control of those portfolio firms currently controlled by FIH.<sup>13</sup>

14. **TIH** is described as a a broad based black economic empowerment entity whose shareholding benefits organized black owned businesses, labour movements and women groups. TIH has a joint venture company, Tsogo Sun with the SAB Miller. Both TIH and SAB Miller own a 51% and 49% shares in Tsogo Sun respectively.

15. **Tsogo Sun Gaming** is a casino operating entity, which owns 5 casino licenses operating in various geographic areas as described elsewhere in this report.<sup>14</sup>

### The relevant product market

16. It is clear from the above that the only product overlap between the parties relates to their respective interests in the gaming industry (provision of casino in particular).

### The relevant geographic market

17. It can be seen from the above that Kwazulu-Natal (Durban) seems to be the only region where the parties have interest in casino operation, i.e., in their joint venture, Suncoast Coast Casino & Entertainment World. According to the Commission, the geographic overlap between the merging parties is in the Kwazulu-Natal area.<sup>15</sup>

### Market shares

18. Below is a table (provided by the parties) reflecting the market share data relating to the gaming industry at regional and national level.

Province	Estimated Market Share				
	Sun International	<b>Tsogo Sun</b>	Global Resorts	Gold Reef	Others
Gauteng	18 %	<b>31 %</b>	29 %	20 %	2 %
Western Cape	85 %	-	-	5 %	10 %
<b>Kwazulu-Natal</b>	<b>30 %</b>	<b>55%</b>	-	10 %	5 %
Eastern Cape	70 %	<b>30 %</b>	-	-	-
Northwest Province	95 %	-	-	-	5 %
Mpumalanga	-	<b>80 %</b>	20 %	-	-
Free State	100 %	-	-	-	-

<sup>13</sup> See Pages 367-370 of the Record.

<sup>14</sup> Refer to footnote 6 *supra*.

<sup>15</sup> Johnnic's only casino interests are conducted through Durban Add-Ventures, a subsidiary of Johnnic (**71.3%**). Through Durban Add-Ventures, Johnnic owns an effective **28,5%** stake in The Suncoast Casino and Entertainment World ("**Suncoast**") complex on Durban's beachfront. Suncoast is a **40/60 joint venture** between Durban Add-Ventures and Tsogo Sun Holdings (Pty) Limited.

Northern Province	75 %	-	-	-	25 %
Northern Cape	75 %	-	-	-	25 %
Total SA Market	40 %	<b>25 %</b>	15 %	10 %	10 %

### Competition evaluation

19. The parties contended that Johnnic Holdings is not considered a significant “player” in any region within the gaming industry. The only geographic area affected is Kwazulu-Natal where the merging parties are involved via indirect non-controlling equity investments in various entities in the gaming industry.<sup>16</sup> On the other hand, the Commission contended that the proposed transaction would not result in any change in the current market structure.

20. We were told that entry into the gaming industry is regulated through the national Gambling Act 33 of 1996, which provides for the granting of a maximum of 40 licences, distributed across each of the 9 new provinces. The parties further informed us that there are 30 casinos operating and 10 outstanding licences currently. Of the 30 existing casinos, Tsogo Sun operates 5 casinos. The competitors of Tsogo Sun (**55%**) are Sun International with **30%**; Gold Reef (**10%**); and Others (**5%**). The merging parties contended that the proposed transaction does not in any way increase the barriers to entry, as these regulatory requirements exist irrespective of the proposed merger. It is further contended that both Johnnic and FIH have limited interests in the gaming industry. The parties further intimated that the merger would enable a relatively new player such as Johnnic to increase its presence in the gaming sector, and the transaction was therefore pro-competitive.

21. We were satisfied with the merging parties’ and the Commission’s submissions, hence we are of the view that the transaction is unlikely to prevent or lessen competition substantially.

### Conclusion

22. The merger raises no public interest concerns militating against the approval of the transaction. Accordingly, the merger is approved unconditionally.

	18 March 2005
<b>Norman Manoim</b>	<b>Date</b>

**Concurring: Yasmin Carrim and Merle Holden**

For Johnnic	:	Jocelyn Katz & Meluleki Nzimande ( <i>Webber Wentzel Bowens</i> )
For Fabcos	:	Werner Behrens ( <i>Lowndes &amp; Associates</i> )

<sup>16</sup> See footnote 11 *supra*.

For the Commission:      Makgale Mohlala (*Mergers & Acquisitions*)