

**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CASE NO: 116/LM/OCT08**

In the matter between:

**GOVERNMENT EMPLOYEES PENSION FUND**

Acquiring Firm

**and**

**CERTAIN PROPERTIES IN ZENPROP PORTFOLIO**

Target firms

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Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and

M Mokuena (Tribunal Member)

Heard on : 19 December 2008

Order issued on : 19 December 2008

Reasons issued on : 23 January 2009

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**REASONS FOR DECISION**

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**APPROVAL**

1. On 19 December 2008 the Tribunal approved the property merger between the aforementioned parties. The reasons for the decision follow:

**THE PARTIES**

2. The primary acquiring firm is Government Employees Pension Fund ("GEPF") which owns a portfolio comprising office, retail, industrial and residential properties.<sup>1</sup> The Public

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<sup>1</sup> For GEPF's property portfolio, see Appendix B attached to the parties' competitiveness report – pg. 75 – 78 of the record.

Investment Corporation (“PIC”) is the investment portfolio manager of GEPF. The primary target properties entail 50 properties and letting enterprises of Zenprop (Pty) Ltd (“Zenprop”) which comprise of office, retail, industrial and hotel properties.<sup>2</sup>

## THE TRANSACTION AND RATIONALE

3. In terms of the proposed transaction GEPF intends to acquire the aforesaid 50 properties of Zenprop. GEPF views the proposed transaction as a development strategy, to grow its property investment portfolio. Zenprop, which is primarily a property developer, considers the proposed transaction as an opportunity to realize the needed returns on its investment while it remains in the industry, particularly with the current liquidity problems faced by the property industry.

## RELEVANT PRODUCT MARKET

4. The proposed merger results in geographical overlap in the activities of the merging parties in 8 nodes consisting of Grade A,B and P office space, and light industrial properties. These are set out below with their respective post merger market shares:

<b>Node</b>	<b>Post Merger Market Share of merged entity</b>
Grade A office space in Cape Town CBD	5.2%
Grade A office space in Midrand	20.2%
Grade B office space in Centurion	2.9%
Grade B office space in Hatfield	3.4%
Grade B office space in Alberton	8.9%
Grade P office space in Sandton	16.2%
Light Industrial Property in Edenvale	3.46%

<sup>2</sup> For Zenprop’s target property portfolio, see Appendix A pg. 72 -73 of the record.

Light Industrial property in Midrand	12.4%
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5. The combined post merger market shares of the merging parties in respect of the overlapping nodes are not significantly high and do not raise any competition concerns, except for the Grade A office space in Midrand which raises concerns given the high combined post market share of 20.2%. The concerns do not only stem from the high market share in this area alone, but also the effect that this might have on managing the rental levels in this area.
6. The merging parties submitted that the 20.2% estimated combined post merger market share would decline to an estimated 13% as a result of new office developments in Midrand already in progress.<sup>3</sup> In addition there are other active players in all the overlapping nodes which will compete with the merging parties.
7. It appears from oral submissions made during our hearings that the likelihood of additional capacity coming into the market is already having a bearing on rental levels being achieved in the area. Also tenants, who are typically large concerns making use of intermediaries to negotiate for them, have a very sophisticated view of the market and know what rental levels they can expect to achieve. In the circumstances at present, it would appear that the merged entity would not be in a position post merger to increase its pricing power in respect of levels for Grade A office space in Midrand.<sup>4</sup>

## CONCLUSION

8. The Tribunal finds that this merger will not result in any substantial lessening or prevention of competition in the relevant market. Accordingly the merger is approved without conditions.

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<sup>3</sup> This new development is called Waterfall Property Development in Midrand between Allandale and the M1 Highway, which will include the Waterfall Eco Office Park.

<sup>4</sup>See Mr. Zagaretos' submissions from PIC, pg. 6 of the transcript, and Mr. Weinstein's submissions from Zenprop, pg. 7 of the transcript.

9. There are no public interest issues.

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N Manoim

Tribunal Member

23 January 2009

Date

Y Carrim and M Mokoena concurring

For the merging parties : Glyn Marais Attorneys

For the Commission : T Mavhase

Tribunal Researcher: L Xaba