

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 74/LM/JUL07

In the matter between:

JOHANNESBURG MUNICIPAL PENSION FUND

Acquiring Firm

And

**ERF 2860 NEWTON PARK TOWNSHIP AND
ERF 2878 MOUNT ROAD TOWNSHIP**

Target Firm

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

Heard on : 31 August 2007
Decided on : 31 August 2007

Reasons issued on : 10 September 2007

REASONS FOR DECISION

APPROVAL

[1] On 31 August 2007, the Tribunal approved the merger between Johannesburg Municipal Pension Fund (“JMPF”), the acquiring firm and Erf 2860 Newton Park Township, known as the Bridge Mall and Erf 2878 Mount Road Township, known as the Shoprite Mall (“the target properties”), all situated in Port Elizabeth.

THE TRANSACTION

[2] JMPF is a pension fund which is registered, and conducts its business, in accordance with the pension fund Act¹ (“the pension fund Act”), as amended from time to time. JMPF is not controlled by, and does not control, any firm. It has a 35% non-controlling interest in the target properties, which it now wants to increase to 54.6% by acquiring an additional 19.6% from the Joint Municipal Pension Fund (“the Joint Fund”).

[3] The Shareholding in the target properties prior the merger was presented by the parties as follows:

Table 1. Shareholding in the target properties prior to the transaction.

Name of share holder/company	Share holding in percentage
JMPF, Primary acquiring firm in the instant transaction	35%
Acucap Investments 3 (Pty) Limited (“Acucap”)	18%
Municipal Employee Pension Fund (“MEPF”)	11%
Joint Municipal Pension Fund (“Joint Fund”)	35%

[4] The shareholding in the target properties after the transaction will be as follows:

Table 2. Shareholding in the target properties after the transaction

Name of share holder/company	Share holding in percentage
JMPF, Primary acquiring firm in the instant transaction	54.8%
Acucap Investments 3 (Pty) Limited (“Acucap”)	18%
Municipal Employee Pension Fund (“MEPF”)	11%
Joint Municipal Pension Fund	15.4%

RATIONALE FOR THE TRANSACTION

¹ 24 of 1956, as amended.

[5] According to JMPF the transaction provides them with an opportunity to obtain a controlling shareholding in the target properties. The Joint Fund submits, on the other hand, that it operates mainly as a net outflow of cash fund i.e. there are more pensioners than there are in-service members and as result the fund pays out more money every month than it receives. The transaction is in accordance with its role as a cash fund.

THE PARTIES' ACTIVITIES

[6] JMPF is a pension fund and conducts its business as such. In terms of the Pension fund Act a pension fund may not carry on any business other than that of a pension fund. The Regulations issued under this Act,² however, prescribe the types of assets a pension fund may invest in as well as the percentage of the pension fund's assets in such investment. The target firm owns two properties in Port Elizabeth namely, the Bridge Mall and Shoprite Mall. JMPF owns no other properties in Port Elizabeth than its minority shareholding in the target properties. Outside the Port Elizabeth geographic market, JMPF also owns land in Soweto and has a 15% stake in the Small Street Mall in the Johannesburg City Centre.

THE RELEVANT MARKET

[7] From the facts it is clear that the relevant product market is the retail property market and the geographic market is that of Port Elizabeth. The parties submitted that retail property can be classified on the basis of their gross lettable area (GLA) as is done by the South African Council of Shopping Centres ("SACSC") as well as whether they are stand alone or inter-linked malls. On this basis the Greenacres Mall as a whole - which includes the target properties, has been classified by SACSC as a

² Published under GN R98 in GG 162 of 26 January 1962.

Regional Centre.³

COMPETITION ANALYSIS

[8] JMPF's increase of its shareholding in the target properties from a 35% non-controlling shareholding to a 54.6% controlling shareholding can best be described as an internal arrangement to restructure the shareholding in the target properties, which does not raise competition concerns. It is clear that JMPF's acquisition of control in the target properties does not result in any market accretion. The relative share of the target properties in the Port Elizabeth retail property market remains unchanged as a result of the transaction

[9] Given the above, we find that the transaction is not likely to substantially prevent or lessen competition.

CONCLUSION

[10] We further find that the transaction does not raise any significant public interest issues and accordingly approve the merger without conditions.

³ See merging parties competitiveness report page 226.

10 September 2007

Date

Y Carrim

N Manoim and U Bhoola concurring.

Tribunal Researcher : P S Munyai

For the merging parties : Jowell Glyn & Marais

For the competition commission : D Masilela and M Mohlala
(Mergers & Acquisitions)