



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM089SEP23

In the matter between:

**Government Employees Pension Fund duly
represented by The Public Investment
Corporation SOC Limited**

Acquiring Firm

And

Shenge Property Group Proprietary Limited

Target Firm

Panel: Andreas Wessels (Presiding Member)
Thando Vilakazi (Tribunal Panel Member)
Geoff Budlender (Tribunal Panel Member)

Heard on: 10 November 2023
Order issued on: 10 November 2023

Reasons issued on: 07 December 2023

REASONS FOR DECISION

Approval

- [1] On 10 November 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein the Government Employees Pension Fund (“GEPF”) intends to acquire a 49% controlling interest in Shenge Property Group (Pty) Ltd (“Shenge”) from Nthoese Investments (Pty) Ltd (“Nthoese Investments”). Currently, Shenge is 100% controlled by Nthoese Investments, a subsidiary of Nthoese Development (Pty) Ltd (“Nthoese”). Post-merger, the

GEPF (as to 49%) and Nthoese (as to 51%) will exercise joint control over Shenge.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary Acquiring Firm is GEPF, a fund duly represented by the Public Investment Corporation SOC Limited (“PIC”). The GEPF is controlled by its Board of Trustees in terms of section 6(2) of the Government Employees Pension Law (Act 21 of 1996).
- [3] The GEPF holds interests in various firms because of its wide investment mandate. The firms in which the GEPF holds a controlling interest, and which are relevant to this transaction include: ADR International Airports South Africa (Pty) Ltd, Pareto Limited, Business Venture Investments No 1360 (Pty) Ltd, AP Venture Fund I, ETG Input Holdco Limited and Menlyn Maine Investment Holdings (Pty) Ltd.
- [4] The PIC, on behalf of the GEPF, invests in various classes of assets including equities, property, and fixed income, which the PIC has been appointed to manage. The GEPF holds a property portfolio consisting of office, retail, residential, hotel and industrial properties situated throughout South Africa.

Primary target firm

- [5] The primary target firm is Shenge, a newly established company that was created for the purposes of the proposed transaction. Shenge is 100% owned by Nthoese Investments, a subsidiary of Nthoese. Shenge does not (directly or indirectly) control any firm/s.
- [6] Nthoese’s activities include a property development, property investment and property management company.
- [7] As part of the implementation process of the proposed transaction, Nthoese will conduct an internal restructuring wherein it will transfer ownership of its property portfolio (“Target Portfolio”) on a staggered basis to Shenge which will ultimately result in the Target Portfolio being held by Shenge. The Target Portfolio comprises of income generating rentable retail and office properties as well as properties that are either properties to be redeveloped or vacant land parcels to be developed.
- [8] Post-merger, Shenge will operate as a joint venture between Nthoese and the GEPF which will be used jointly to invest in the Target Portfolio.

Proposed transaction and rationale

Transaction

- [9] The proposed transaction involves the GEPF subscribing for a 49% shareholding in Shenge.

Rationale

- [10] The proposed transaction will present the GEPF with an opportunity to expand its property investment portfolio so as to realise profitable returns for its members. The GEPF will get exposure to a portfolio of office and retail assets in line with its investment mandate and strategy.
- [11] Nthoesse considered the establishment of an unlisted property fund with a significant institutional investor as an anchor shareholder, as being the optimal approach in raising equity expansion capital to finance its development pipeline and grow its property portfolio.

Relevant markets

- [12] The proposed transaction raises a horizontal overlap between the activities of the merging parties in relation to the provision of Grade A and B office space. In previous cases decided by the Tribunal (i.e., *Capitec Bank Limited and SPEAR REIT Limited on behalf of the immovable property and rental enterprise known as the Liberty Life Office Building*¹), the Tribunal considered that office properties can be defined according to grades, namely Grade P, A, B or C.
- [13] In relation to the geographic overlap between the merging parties' activities, they have overlapping office properties situated in the Midrand and Johannesburg Central Business District (CBD) nodes. According to the South African Property Owners' Association ("SAPOA") report, Johannesburg CBD and Midrand node are separate geographic nodes. In light of the above, we considered the effect of the proposed merger in (i) the market for the provision of rentable Grade A office space in the Midrand node; and (ii) the market for the provision of rentable Grade B office space in the Johannesburg CBD node.

Competition assessment

Market for the provision of rentable Grade A office properties within the Midrand node

¹ Case No.: LM011Apr23.

- [14] Based on the market share estimates provided by the Competition Commission (“the Commission”), we find that the merged entity will have a market share of below 20%, with a market share accretion of approximately 3% in the market for the provision of rentable Grade A office space in the Midrand node. We also find that there are other property investment companies active in the property market such as Accelerate Property Fund Limited (“Accelerate”), Arrowhead Properties Limited (“Arrowhead”), Attacq Limited (“Attacq”), Delta Property Fund Limited (“Delta”), Growthpoint Properties Limited (“Growthpoint”), Redefine Properties Limited (“Redefine”), Equites Property Fund (“Equites”), SA Corporate Real Estate Limited (“SA Corporate”) and Vukile Property Fund Limited (“Vukile”), amongst others.
- [15] For these reasons, we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable Grade A office space in the Midrand node.

Market for the provision of rentable Grade B office space in the Johannesburg CBD

- [16] In line with the Commission’s recommendation, we find that the merged entity will have a market share of below 15%, with a market share accretion of approximately 10% in the market for the provision of rentable Grade B office space in the Johannesburg node. The Commission has also identified several competing property investment companies in the relevant market. These include Emira, Growthpoint, Redefine, SA Corporate, Fortress REIT Limited, Equites, Vukile, Delta, Acision Limited, Arrowhead and Accelerate, amongst others. Accordingly, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable Grade B office space in the Johannesburg CBD node.
- [17] Having regard to the information above, we are satisfied that the proposed merger does not raise any significant competition concerns.

Public interest assessment

Effect on employment

- [18] The merging parties submitted that there will be no retrenchments or redundancies as a result of the proposed transaction. All 34 employees currently employed by Nthoese will be transferred in terms of Section 197 of the Labour Relations Act, No. 66 of 1995 (as amended) to Jeqe Property Management (Pty) Ltd (“Jeqe Property Management”), who will manage the Target Portfolio post-merger.

[19] The Commission engaged the employee representatives of the merging parties and no employment concerns were raised.

[20] Considering the above, we consider it unlikely that the proposed transaction will have a negative effect on employment.

Effect on the spread of ownership

[21] Pre-merger Shenge is 100% owned by Historically Disadvantaged Persons (HDPs) by virtue of its 100% shareholder, Nthoese, which is 100% black owned. The GEPF does not have any HDP ownership credentials given that the GEPF is a juristic person established pursuant to section 2 of the Government Employees Pension Law and as a creature of statute, does not possess a B-BBEE certificate. Consequently, the proposed transaction will result in Shenge's HDP ownership reducing by 49% to 51%.

[22] The merging parties submitted that the merger will facilitate Nthoese's ability to generate funds to further increase its participation in the property sector. Nthoese intends to grow its property portfolio and, in this regard, has considered a range of avenues to give effect to this intention which have been unsuccessful.

[23] In addition, the merging parties indicated that the effects of the dilution are mitigated by the fact that Shenge will have a 100% black board of directors and senior management team, and they will be entrusted with voting rights. The merging parties explained that Nthoese has grown steadily over the years and is at the stage where it requires an investor such as the GEPF to assist in its further growth and development. An expansion of its business as a result of the proposed transaction would likely have a positive effect on employment and for small and HDP-owned firms that render services to the business.

[24] The merging parties further submitted that the properties of Shenge are mostly situated in underserved low-income areas including townships and rural areas. It is submitted that these areas are unfortunately prone to socio-economic issues such as unemployment, poverty and poor service delivery. As such, the merging parties submitted that the proposed transaction would present various public interest benefits which will go a long way towards improving the economic and socio-economic state of these communities. These public interest benefits include (i) job creation; (ii) access to convenient retail services and amenities in underserved areas; (iii) municipal bulk infrastructure contribution; (iv) improved municipal revenues; and (v) supporting local businesses.

[25] Lastly, the merging parties explained that Nthoese holds various subsidiaries, some in the form of Special Purpose Vehicles ("SPV"). In most instances, Nthoese is the only shareholder in the SPV and in some instances, other entities

hold the shares together with Nthoese in the SPVs. In the latter instances, certain of the other entities holding shares in the SPVs are non-HDP shareholders. In relation to the target properties which were held in an SPV by Nthoese together with a non-HDP shareholder, the HDP ownership will improve. Post-transaction, Shenge will be jointly controlled by Nthoese (51%) and the GEPF (49%). Therefore, the merging parties submitted that the HDP ownership contribution flowing from these arrangements will increase the HDP ownership status in relation to the Target Portfolio.

[26] Given that the merger entails an acquisition by GEPF and Shenge will continue to remain majority owned and controlled by HDPs, the Commission concluded that the merger does not raise any concerns as regards this public interest ground.

[27] Based on the above facts, we have no reason to disagree with the Commission's public interest assessment.

Conclusion

[28] For the reasons set out above we approve the proposed transaction without conditions.

Professor Thando Vilakazi

07 December 2023

Date

Concurring: Adv Geoff Budlender SC and Mr Andreas Wessels

Tribunal case manager : Baneng Naape

For the merging parties : Andries Le Grange and Nelisiwe Khumalo of
Cliffe Dekker Hofmeyr Inc

For the Commission : Zanele Hadebe and Wiri Gumbie