

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM079Jul15

In the matter between:

Levoca 549 (Pty) Ltd and Government Employees Pension Fund

Primary Acquiring Firms

And

Kelvin Holdings (Pty) Ltd

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member), Medi Mokuena (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	26 August 2015
Order issued on	:	26 August 2015
Reasons issued on	:	22 September 2015

Reasons for Decision (Public Version)

Approval

- [1] On 26 August 2015 the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between Levoca 549 (Pty) Ltd (“Levoca”) and Government Employees Pension Fund (“GEPF”) and Kelvin Holdings (Pty) Ltd (“Kelvin Holdings”). The reasons for approving the transaction follow.

Parties to the transaction

- [2] The first primary acquiring firm is Levoca, a newly registered and dormant company which does not conduct any business activities. Levoca is ultimately controlled by Pan African Infrastructure Development Fund (“PAIDF”)¹, a trust established in South Africa, which has a 95.5% shareholding in Aldwych Holdings Ltd (“Aldwych Holdings”). Aldwych Holdings wholly-owns Aldwych Power Holdings Ltd

¹ PAIDF is a large-scale long-term infrastructure fund created to make infrastructure investments on the African continent.

("Aldwych Power"), which in turn wholly-owns Aldwych Kelvin Holdings Ltd ("Aldwych Kelvin"). Aldwych Kelvin in turn wholly-owns Levoca. PAIDF and the Aldwych Group do not control businesses in the power generation market in South Africa, other than that associated with Kelvin Power Station. The Kelvin Power Station generates part of the electricity purchased and distributed by it to City Power Johannesburg ("City Power"), a wholly-owned company of the Municipality of Johannesburg.

- [3] The second primary acquiring firm is GEPP, a juristic person established by section 2 of the Government Employees Pension Law Act.² GEPP is a defined benefit pension fund, which is predominantly involved in managing and administering pensions and other benefits for government employees in South Africa. GEPP has no subsidiaries.
- [4] The primary target firm is Kelvin Holdings a special purpose investment holding company, with a sole purpose of holding shares in Kelvin Power (Pty) Ltd ("Kelvin Power"). Kelvin Power owns the Kelvin Power Station. Kelvin Power's only business is to operate the Kelvin Power coal fired power station and to sell electricity generated by it.

Proposed transaction and rationale

- [5] Through a Sale of Shares and Claims Agreement, Levoca and GEPP will jointly acquire shares in Kelvin Holdings, therefore establishing control over Kelvin Power. Post-merger Levoca will hold [..%] shareholdings in Kelvin Holdings, whilst GEPP will also hold [..%] shares in Kelvin Holdings. Kelvin Holdings will hold all the shares in Kelvin Power, as it does pre-merger.
- [6] For PAIDF and GEPP, the proposed transaction provides an investment in future development within the energy sector. For the target firm's present shareholders the merger enables them to exit an asset which they consider subjects them to too much financial exposure.

² Act 21 of 1996.

Competition assessment

- [7] The relevant product market is the market for the generation of power. The Commission submitted that no horizontal overlap occurs as a result of the proposed transaction. The only change that the proposed transaction brings is a change in ownership; however ownership incentives do not change, as both prior to and subsequent to the transaction, the owners are financial institutions who have no interest in firms that provide power generation services in Johannesburg. The new owners will outsource the management of the target firm to an engineering company, also called Aldwych, which is, pre-merger, already performing that function. The Commission contacted City Power to ascertain whether it had any concerns with the proposed transaction. City Power advised that it has a bulk power purchase agreement with Kelvin Power, with an option to renew when the agreement comes to an end in six years' time. City Power further advised that it had no concerns with the proposed transaction.
- [8] Based on the above analysis, the Commission came to the conclusion that the proposed transaction will not substantially prevent or lessen competition in the identified market. We concur with the Commission on this finding.

Public Interest

- [9] The proposed transaction will not have any negative impact on employment. The proposed transaction raises no other public interest concerns.

CONCLUSION

- [10] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market. We therefore approve the transaction without conditions.



Mr Norman Manoim

22 September 2015

DATE

Ms Medi Mokuena and Mr Andreas Wessels concurring.

Tribunal Researcher:

Caroline Sserufusa

For the merging parties:

Stephen Langbridge of Fasken Martineau and
Burton Phillips of Norton Rose Fulbright

For the Commission:

Nolubabalo Myoli