



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM246Mar16

In the matter between:

GOVERNMENT EMPLOYEES PENSION FUND C/O

PUBLIC INVESTMENT CORPORATION SOC LIMITED

Primary Acquiring Firm

and

THE SIX (6) IMMOVABLE PROPERTIES

AND RENTAL ENTERPRISES

Primary Target Firm

Panel : Yasmin Carrim (Presiding Member)
: Anton A. Roskam (Tribunal Member)
: Andiswa Ndoni (Tribunal Member)
Heard on : 22 March 2016
Order Issued on : 22 March 2016
Reasons Issued on : 20 April 2016

Reasons for Decision

Approval

[1] On 22 March 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between Government Employees Pension Fund C/O Public Investment

Corporation SOC Limited and the Six (6) Immovable Properties and Rental Enterprises.

- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firms

- [3] The primary acquiring firm is the Government Employees Pension Fund ("GEPF"), a pension fund registered in terms of the laws of the Republic of South Africa, under the Government Employee Pension Law 21 of 1996, as amended.
- [4] GEPF manages and administers pensions and other benefits for government employees. It is a statutory entity and is not controlled by any firm as envisaged in the Competition Act No.89 of 1998 ("the Act").
- [5] GEPF is duly represented by the Public Investment Corporation SOC Ltd ("PIC"), a public company established in terms of Public Investment Corporation Act 23 of 2004. The PIC acts as an investment portfolio manager for the GEPF.

Primary target firms

- [6] The target properties are 6 letting enterprises comprising, Central City Shopping Centre ("Central City"); Eden Square Shopping Centre ("Eden Square"); Tembisa City Shopping Centre ("Tembisa City"); Ga-Rankuwa City Shopping Centre ("Ga-Rankuwa City"); and Madeira Plaza ("Madeira Plaza").
- [7] These 6 retail properties are controlled by Community Property Company ("CPC") and Tembisa Plaza Share Block (Pty) Ltd ("TPS") which are ultimately controlled by Old Mutual Group Holdings (SA) (Pty) Ltd ("OMSA").
- [8] The target properties are all retail properties comprising of four community centres, a minor regional centre as well as a neighbourhood centre. These are located in the Gauteng, Limpopo, and Eastern Cape provinces.

Proposed transaction and rationale

- [9] GEPF intends to acquire a 100% undivided share in each of the target properties. Upon completion of the proposed transaction, GEPF will exercise sole control over the target properties.
- [10] The merging parties submit that the proposed transaction forms part of an agreement between Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA") and CPC, TPS and GEPF to settle a policy benefit that has become due to the GEPF, partly through cash and through the sale of the target properties to the GEPF.

Impact on competition

- [11] During its investigation the Commission found that the activities of the acquiring firm did not overlap in the Limpopo and Eastern Cape provinces, given that GEPF does not own any retail property in these regions. As such, the Commission did not assess these markets further.
- [12] However, the Commission found that the proposed transaction presented a potential overlap in the provision of rentable retail properties in Pretoria and surrounding areas, where Central City (a minor regional centre) and Ga-Rankuwa (a community centre) are situated.
- [13] In assessing the relevant market, the Commission sought to compare the property portfolios of the acquiring firm and the target properties. It found that the acquiring firm's portfolio comprised neighbourhood centres, convenience centres, a community centre and a super-regional centre in Pretoria. Therefore when applying a strict retail property classification, the Commission was of the view that there would be no overlap in the merging parties' properties, given that Central City is classified as a minor regional centre and constituted a distinct product market from all other properties owned by the acquiring firm.
- [14] In relation to the community centres, the Commission noted that while these shared the same classification, when following the approach adopted in Hyprop/Attfund¹, the

¹ Tribunal Case No. 05/LM/Jan11

nearest comparative centre to the acquiring firm (i.e. the Jacaranda Shopping centre, a community centre) was more than 34km away from the target properties (i.e. Ga-Rankuwa) resulting in no overlap.

[15] The Commission therefore concluded that the proposed transaction was unlikely to substantially prevent or lessen competition.

[16] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

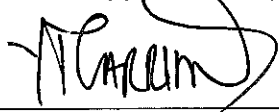
Public Interest

[17] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment. The employees managing the target properties will remain unchanged.²

[18] The proposed transaction further raised no other public interest concerns.

Conclusion

[19] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no other public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.



Ms Yasmin Carrim

20 April 2016

DATE

Mr Anton A. Roskam and Ms Andiswa Ndoni concurring

Tribunal Researcher: Aneesa Ravat

For the merging parties: Nazeera Mia from Cliffe Dekker Hofmeyr and Helgaard von Holtzhausen legal counsel for PIC.

For the Commission: Maanda Lambani

² Transcript 22 March 2016, page 5