

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: LM094Aug24

In the matter between:

Government Employee Pension Fund, duly
represented by Public Investment Corporation SOC
Ltd (PIC)

Primary Acquiring Firm

And

Lanseria Holdings (Pty) Ltd

Primary Target Firm

Panel: T Vilakazi (Presiding Member)
I Valodia (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 24 October 2024

Decided on: 24 October 2024

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

**Presiding Member
Prof. Thando Vilakazi**

24 October 2024

Date

Concurring: Prof. Imraan Valodia and Ms Andiswa Ndoni



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 24 October 2024

To : Cliffe Dekker Attorneys

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Case Number: LM094Aug24

Government Employee Pension Fund, duly represented by Public Investment Corporation SOC Ltd (PIC) And Lanseria Holdings (Pty) Ltd

You applied to the Competition Commission on **21 August 2024** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

ANNEXURE A

GOVERNMENT EMPLOYEES PENSION FUND REPRESENTED BY THE PUBLIC INVESTMENT CORPORATION SOC LIMITED

and

LANSERIA HOLDINGS PROPRIETARY LIMITED

CT Case No: LM094Aug24

CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meaning assigned to them below, and cognate expressions bear a corresponding meaning –

1.1.1. **“Acquiring Firm”** means Government Employees Pension Fund represented by the Public Investment Corporation SOC Limited;

1.1.2. **“ACSA”** means Airports Company South Africa Limited;

1.1.3. **“Approval Date”** means the date referred to on the Tribunal’s Merger Clearance Certificate (Notice CT10) in terms of the Competition Act;

1.1.4. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.1.5. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;

1.1.6. **“Competition Act”** means the Competition Act 89 of 1998, as amended;

- 1.1.7. **“Competitively Sensitive Information”** includes all pricing information including but not limited to prices charged at the airports, rebates, discounts and planned increases or decreases; cost information for services at the airports; information on specific clients and client strategies including information on sales volumes of clients; marketing strategies of each airport; investment strategies; budgets, business models and business plans;
- 1.1.8. **“Conditions”** means these conditions;
- 1.1.9. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.10. **“Holdco Decision”** means the Tribunal's decision and conditions in the merger between *Holdco and Lanseria International Airport (Pty) Ltd & Execujet Airline Investments (Pty) Ltd* under Tribunal case number 016261;
- 1.1.11. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. **“LIA”** means Lanseria International Airport Proprietary Limited and Lanseria Airport Investments Proprietary Limited;
- 1.1.13. **“Merger”** means the acquisition of control of the Target Firm by the Acquiring Firm;
- 1.1.14. **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.1.15. **“South Africa”** means the Republic of South Africa;
- 1.1.16. **“Target Firm”** means Lanseria Holdings Proprietary Limited;
- 1.1.17. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.18. **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal.

2. RECORDAL

- 2.1. It is recorded that the Acquiring Firm currently has a non-controlling interest in the Target Firm. The Acquiring Firm also has a 20% non-controlling interest in ACSA. Both ACSA and the Target Firm control functioning commercial airports operating in South Africa.
- 2.2. In order to alleviate any information exchange concerns that may accompany the Acquiring Firm holding interests in both the Target Firm and ACSA, the Tribunal previously in the Holdco Decision imposed conditions that would prevent the flow of Competitively Sensitive Information between ACSA and the Target Firm for as long as the Acquiring Firm could appoint a director to the board of ACSA.
- 2.3. In the current Merger, the Tribunal requested the Merging Parties to commit to a standalone condition that would ensure that similar information exchange conditions as contained in the Holdco Decision are imposed in respect of the current Merger. These Conditions contain such commitments.

3. INFORMATION EXCHANGE CONDITIONS

- 3.1. For as long as the Acquiring Firm can appoint a director to the board of directors of ACSA, the Acquiring Firm will ensure:
 - 3.1.1. That it does not appoint any common directors to the board of directors of LIA and ACSA;
 - 3.1.2. That its investments in LIA and ACSA have adequate security and confidentiality safeguards preventing the sharing of Competitively Sensitive Information;
 - 3.1.3. Any Competitively Sensitive Information is only reported to the respective investment committees in closed door sessions and such information is aggregated; and
 - 3.1.4. No information regarding any negotiation between LIA and any airline customer or prospective airline customer concerning the terms and conditions (including tariffs) for the provision of services by LIA shall be conveyed to the PIC's respective investment committees until such time as those negotiations have been concluded or terminated.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1. The Acquiring Firm shall implement the undertakings in 3 above within 10 Days of the Approval Date. As proof of compliance thereof, it shall submit an affidavit by a duly authorised representative attesting to the implementation of the above undertakings.

5. DURATION OF THE CONDITIONS

5.1. These Conditions shall automatically terminate at the earlier of the Acquiring Firm (i) no longer having any representatives on the board of directors of either ACSA or the Target Firm; or (ii) no longer having shareholding in either ACSA or the Target Firm.

6. APPARENT BREACH

6.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions or otherwise determine that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

7. VARIATION

7.1. The Merging Parties and/or the Commission shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Amended Conditions.

8. GENERAL

8.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.