



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM027May21

The Government Employees Pension Fund (Primary Acquiring Firm)
and
InvestCo (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

- [1] On 3 August 2021, the Competition Tribunal unconditionally approved a large merger between The Government Employees Pension Fund (the “GEPF”) represented by the Public Investment Corporation SOC Limited (the “PIC”), and InvestCo (Pty) Ltd (“InvestCo”).
- [2] The transaction involves a restructuring through which Thebe Investment Corporation (Pty) Ltd (“Thebe”) will transfer its food, agro-processing and services¹ portfolio (the “food, agro and services business”) to InvestCo.² The GEPF will acquire 35% of the shares in InvestCo. Post-merger, the GEPF will acquire joint control of InvestCo.³
- [3] The GEPF is a pension fund that manages and administers pensions and other benefits for government employees in South Africa. It is not controlled by any firm. The PIC, on behalf of the GEPF, invests in various classes of assets including equities, property and fixed income. The GEPF holds various non-controlling interests in firms that are active in the food, agro and services sector.⁴ Of relevance is GEPF’s 50% controlling interest in Just Veggies Equity (Pty) Ltd (“Just Veggies”).⁵
- [4] Thebe controls several firms. InvestCo is Thebe’s wholly owned special purpose vehicle created for the purposes of the proposed transaction. InvestCo controls several

¹ Food catering; fresh produce growing, packaging, marketing and distributing; cleaning; hygiene; facilities management; corporate real estate services and other related services.

² Thebe will thereafter dispose of its shares in the food, agro and services business to InvestCo, in exchange for InvestCo issuing 65% of its shares to Thebe.

³ The Commission found that GEPF’s 35% shareholding entitles them to veto strategic decisions as contemplated by section 12(2)(g) of the Competition Act No. 89 of 1998. InvestCo will be jointly controlled by the GEPF and Thebe.

⁴ A relevant example being GEPF’s non-controlling interest in Bidvest Group Limited’s investment in cleaning, hygiene, and catering services.

⁵ A local agricultural enterprise based in KwaZulu Natal, which provides quality fresh and frozen vegetables to the local market.

firms that are active in the food, agro and services sector. Of relevance is InvestCo's [REDACTED] controlling interest in Harvest Fresh Farms (Pty) Ltd ("Harvest Fresh").⁶

- [5] The Competition Commission ("Commission") found that although the merging parties are broadly active in the food, agro and services sector in South Africa, the only horizontal overlap arising from this transaction is in respect of Just Veggies and Harvest Fresh, in the supply of value added and pre-packed fresh produce in the vegetable farming and processing sector.⁷ The Commission found that the pre-existing vertical relationships were unlikely to have any negative effects as the GEPP does not control any of the firms which have a business relationship with InvestCo.
- [6] The Commission found that Harvest Fresh operates in the Gauteng and Free State Provinces whereas Just Veggies operates in the KwaZulu-Natal Province. The Commission also found that although the GEPP controls Just Veggies, given Just Veggies' financial difficulties and its limited operations (as confirmed by a major customer), the merger is unlikely to significantly alter the structure of the market wherein Just Veggies and Harvest Fresh operate.
- [7] The Commission was initially concerned that if the GEPP could appoint directors in the firms that it held both controlling and non-controlling interests in the food, agro and services business sector, that these structural links could allow for the sharing of competitively sensitive information⁸ among competitors. The merging parties submitted that the PIC has an Integrity Walls Policy (the "Policy") in place which, through monitoring and controls within the PIC, prohibits the flow of one investee company's confidential information to another, and prevents the misuse of inside information, confidential information and investee information.
- [8] The Commission analysed the Policy and found that it prohibits the appointment of an employee or non-executive director to the board of directors of more than one investee company operating within the same industry sector. In other words, a representative of the GEPP may not sit on the boards of two or more companies that are direct competitors of one another. The Commission found that the Policy offers adequate safeguards to mitigate any information sharing concerns arising from the cross-directorships resulting from this merger.
- [9] The employee representative of Thebe confirmed that Thebe's employees were notified of the proposed transaction and that no employment concerns were received. The merging parties additionally submitted unequivocally that the proposed transaction would not result in any job losses or have an impact on employment.⁹
- [10] The Commission was therefore of the view that the proposed transaction was unlikely to substantially prevent or lessen competition, and did not raise any public interest concerns.

⁶ A farming enterprise for growing, packing and distributing ready to eat salad blends, baby leaf salads, fresh-cut vegetables and herbs.

⁷ The Commission found that the other non-controlling interests held by the GEPP in the food, agro and services sector did not raise any competition concerns as the GEPP did not control them.

⁸ Information such as pricing and marketing strategies.

⁹ The Commission was unable to get a response from the GEPP's employee representative despite numerous attempts.

[11] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.

Enver Daniels

Mr Enver Daniels
Prof Imraan Valodia and Dr Thando Vilakazi concurring

03 August 2021

Date

Tribunal Case Manager: P Kumbirai
For the Merging Parties: N Hlatshwayo and P Mashalane of Lawtons Africa
For the Commission: P Bele and W Gumbie