



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM094Aug24

In the matter between:

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

Primary Acquiring Firm

And

LANSERIA HOLDINGS PROPRIETY LIMITED

Primary Target Firm

| | | |
|-------------------|---|-------------------------------|
| Panel | : | T Vilakazi (Presiding Member) |
| | : | I Valodia (Tribunal Member) |
| | : | A Ndoni (Tribunal Member) |
| Heard on | : | 24 October 2024 |
| Order issued on | : | 24 October 2024 |
| Reasons issued on | : | 19 November 2024 |

REASONS FOR DECISION

[1] On 24 October 2024, the Competition Tribunal (“Tribunal”) conditionally approved a large merger in which the Government Employees Pension Fund (“GEPF”) represented by Public Investment Corporation SOC Limited (“PIC”) will acquire the issued share capital of Lanseria Holdings (Pty) Ltd (“Lanseria Holdings”). Lanseria Holdings and all its subsidiaries are referred to as the Target Group.

The parties and their activities

[2] The primary acquiring firm is the GEPF. The GEPF, through the PIC, invests in funds on behalf of public sector entities. The South African Government controls the PIC. The PIC, the GEPF, and all their subsidiaries are referred to as the Acquiring Group.

- [3] Relevant to this transaction, the PIC's wholly owned subsidiary, ADR International Airports (Pty) Ltd ("ADR"), holds a non-controlling interest, as to 20%, in Airports Company South Africa SOC Ltd ("ACSA").¹ ACSA controls OR Tambo International Airport ("ORTIA"). ORTIA offers airport services similar to those offered by the Target Group.²
- [4] The primary target firm is Lanseria Holdings. Lanseria Holdings directly and indirectly controls Lanseria International Airport (Pty) Ltd ("LIA")³, and Lanseria Airport Investments (Pty) Ltd (formerly known as Execujet Airline Investments Proprietary Limited)⁴. The Target Group is jointly owned by the GEPP/PIC⁵, Acapulco Trade and Invest 164 (RF) (Pty) ("Acapulco")⁶, and Pan African Infrastructure Development Fund (Pty) Ltd ("PAIDF").⁷
- [5] The Target Group is comprised of an airport business in the form of LIA which is also located within Johannesburg. LIA facilitates and handles cargo, charter, and scheduled commercial flights. LIA further facilitates commercial passenger flights between two South African airports, namely King Shaka International Airport and Cape Town International Airport. The Target Group further has limited regional passenger flights and can handle aircraft up to the size of the Boeing 737.⁸
- [6] In respect of commercial flights, LIA provides various services and facilities for landing, parking, and ancillary passenger services. These include ground and ramp handling services for arriving and departing flights (passenger loading and unloading, baggage handling, and ramp handling), fuelling, aircraft cleaning, and loading of catering services. However, certain of the airlines which operate their respective flights at LIA will perform some of these services.

¹ Joint Competition Report, para 1.8.

² Joint Competition Report, para 5.1.1.

³ As to 50%.

⁴ As to 100%.

⁵ As to 37.5%.

⁶ As to 25%.

⁷ As to 37.5%.

⁸ Joint Competition Report, para 5.2.1.

- [7] Concerning cargo flights, LIA also provides services and facilities for landing, parking, and (off)loading. Other services include fuelling logistics and ground handling services.
- [8] Concerning charter flights, Lanseria Airport provides comparable services and facilities to customers who wish to park, store, and rent private jets. The Target Group also provides services such as fuelling and ground handling services.

Proposed transaction

- [9] [REDACTED]
[REDACTED] The PIC is currently a shareholder of Lanseria Holdings, as to 37.5%, meaning that the proposed transaction will result in the PIC holding a 62.5% interest in Lanseria Holdings.

- [10] Post-merger, PIC will solely control Lanseria Holdings.

Competition assessment

- [11] Pre-merger, the Acquiring Group does not compete with the Target Group, as it does not control the Target Group. The Commission found that the Acquiring Group's 20% stake in ACSA does not confer control under the Competition Act. There has been no shareholder agreement governing the relationship between ACSA's shareholders since 2008. Thus, there is no horizontal overlap as regards the Acquiring Group's interest in ORTIA. We agree with the Commission's assessment in this regard.
- [12] To alleviate any information exchange concerns that may arise due to the PIC holding interests in both Lanseria Holdings and ACSA, the Tribunal previously in the related *Holdco/LIA*⁹ transaction of 2013, imposed conditions that would

⁹ *Holdco & Lanseria International Airport (Pty) Ltd and Execujet Airline Investments (Pty) Ltd* (2013), CT Case No: 016261.

prevent the flow of competitively sensitive information for as long as the PIC can appoint a director to the board of ACSA.

[13] In respect of the current merger, the Tribunal requested the merging parties to commit to standalone commitments that would ensure that similar information exchange conditions were in place in relation to the proposed transaction as those imposed in the *Holdco/LIA* matter. The conditions set out in Annexure A of our order in this matter contain such commitments.

[14] The effect of the conditions is to ensure that for as long as the Acquiring Group can appoint a director(s) to the board of directors of ACSA, it shall ensure that it does not appoint common directors on the boards of LIA and ACSA, and that adequate safeguards are in place to prevent the flow of competitively sensitive information between the firms and the relevant investment committees of the Acquiring Group.

[15] Considering the above, the Tribunal is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public interest

Effect on employment

[16] The merging parties submit that the proposed transaction will not lead to any retrenchments or job losses.¹⁰ The Commission contacted the employee representative of the Target Group, and no concerns were raised.¹¹ We considered that the proposed transaction effectively involves corporate restructuring of the Target Group.

[17] We are satisfied that the proposed transaction is unlikely to raise employment concerns.

¹⁰ See paragraph 8.2.1 of the Joint Competition Report.

¹¹ See submissions from the employee representative of the Target Group, dated 02 October 2024.

Effect on the promotion of a greater spread of ownership

[18] The Commission requested the parties to indicate how the merger promotes ownership by HDPs and whether the claimed HDP ownership of the GEPF/PIC falls within the ambit of section 3(2) of the Act.

[19] The merging parties submitted that they do not have the precise HDP share ownership by the Acquiring Group as no official calculation is available. Further, the merging parties submit that the recognition of the Acquiring Group as an HDP shareholder is supported by the Broad-Based Black Economic Empowerment Act of 2003 in terms of which firms may be designated as B-BBEE Facilitators, meaning that any shareholding by a firm holding such status must be treated as shareholding held by 'black people'. The merging parties submitted that the Acquiring Group has been granted such unconditional B-BBEE Facilitator status.¹² However, the merging parties acknowledge that the Acquiring Group's B-BBEE facilitator status is yet to be renewed by the DTIC.

[20] Furthermore, the merging parties referred¹³ to the matter between the *Compensation House duly represented by the PIC SOC Ltd & Rand Mutual Holdings Ltd*¹⁴ wherein the Tribunal took into account that the firm in question had the government as its ultimate shareholder such that the dividends that accrue to that firm benefit all the people of South Africa, in determining that there was no requirement for any further intervention in respect of the promotion of a greater spread of ownership.

[21] [REDACTED]

¹² On 18 September 2024, the merger parties submitted information confirming prior B-BBEE Facilitator status recognition of the Acquiring Group.

¹³ Also see paragraph 4.1.2 of the submission by the merger parties dated 13 September 2024.

¹⁴ See the Tribunal's Decision of Case No.: LM115Oct23.

[REDACTED]

[22] Given the circumstances of this case, as set out above, we do not consider it necessary to conclude on the issue of the HDP ownership status of the PIC and any changes arising because of the proposed transaction. We find that no further interventions are required on this public interest ground.

Other public interest considerations and conclusion

[23] The Tribunal is satisfied that the proposed merger does not raise any other public interest concerns.

Conclusion

[24] No third parties, including customers or competitors, expressed competition or public interest concerns regarding the proposed merger.

[25] The Tribunal approved the proposed merger subject to the Conditions set out in Annexure A of our order.

Signed by: Thando Vilakazi
Signed at: 2024-11-19 10:09:29 +02:00
Reason: Witnessing Thando Vilakazi

Thando Vilakazi

Professor Thando Vilakazi

19 November 2024

Date

Ms Andiswa Ndoni and Professor Imraan Valodia concurring.

¹⁵ Joint Competition Report, paras 2.1-2.3.

¹⁶ *Holdco & Lanseria International Airport (Pty) Ltd and Execujet Airline Investments (Pty) Ltd* (2013), CT Case No: 016261.

Tribunal Case Manager: Theresho Galane

For the Merger Parties: Lebohang Mabidikane and Reece May of Cliffe
Dekker Hofmeyr Attorneys

For the Commission: Rakgole Mokolo and Wiri Gumbie