

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: LM184Mar24**

In the large merger between:

**The Government Employees Pension Fund  
represented by the Public Investment  
Corporation SOC Limited**

Primary Acquiring Firm

And

**Concor Holdings Proprietary Limited**

Primary Target Firm

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Panel:	A Kessery (Presiding Member) I Valodia (Tribunal Member) A Ndoni (Tribunal Member)
Heard on:	15 May 2024
Order issued on:	15 May 2024
Date of last submission:	2 July 2024
Reasons Issued on:	11 July 2024

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### REASONS FOR DECISION

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#### Approval

- [1] On 15 May 2024, the Competition Tribunal (“the Tribunal”) conditionally approved the large merger in which the Government Employees Pension Fund (“GEPF”) will acquire majority shareholding in Concor Holdings Proprietary Limited (“Concor Holdings”) from Southern Palace Group of Companies Proprietary Limited (“SPG”) and Nicasio Proprietary Limited (“Nicasio”).

#### Parties to the transaction and their activities

##### *Primary acquiring firm*

- [2] The primary acquiring firm is the GEPF, a pension fund with a statutory mandate to manage and administer pensions and other benefits for government

employees in South Africa. It is not controlled directly or indirectly by any firm but, is represented by the Public Investment Corporation SOC Limited (“PIC”), which is controlled by the South African Government and acts as an asset management and investment company for various government entities including the GEPF.

Relevant to this transaction, GEPF owns minority, non-controlling stakes in Raubex Group Limited, Wilson Bayley, PPC Limited, Murray & Roberts, Group Five and Basil Read Holdings. These are firms with activities in the construction industry.

- [3] GEPF/PIC and all the firms controlled by it will collectively be referred to as “GEPF”.

#### *Primary target firm*

- [4] The primary target firm is Concor Holdings. It is jointly controlled by the following shareholders: Southern Palace Group of Companies Proprietary Limited (43.76%); Nicasio Proprietary Limited (28.12%); Unemployment Insurance Fund (UIF) (18.75%); and the GEPF (9.37%).
- [5] Concor Holdings directly and indirectly controls numerous firms, including Concor (Pty) Ltd (100%), Conradie Development (Pty) Ltd (100%), Concor Adaptive Strategy (Pty) Ltd (100%) and Conradie Fibre (Pty) Ltd (50%). Concor Holdings and its subsidiaries are collectively referred to as the “Target Group”.
- [6] The Target Group is active in construction, it offers diversified infrastructure and related services in South Africa and other African countries. Its competencies are in infrastructure, building, mining and property development sectors.

### **Proposed transaction and rationale**

#### *Transaction*

- [7] In terms of the proposed transaction, GEPF will acquire 43.76% of the issued share capital in Concor Holdings from SPG and 28.12% of the issued share capital in Concor Holdings from Nicasio.

- [8] Post-merger, GEPF will have sole control and majority ownership over Concor Holdings.
- [9] It is understood that the proposed transaction is primarily aimed at facilitating the ongoing operations of Concor Holdings as a rescue transaction to avoid its possible liquidation.

### **Competition assessment**

- [10] There are no horizontal or vertical overlaps in the activities of the merging parties. However, the Competition Commission (“Commission”) noted that the GEPF holds non-controlling interests in various firms that are active in the construction industry, and which compete with the Target Group. This raised a concern in relation to potential coordinated effects through information sharing, that may arise as a result of GEPF’s cross shareholding in competing firms.
- [11] In assessing the potential coordinated effects, the Commission noted that GEPF has minority non-controlling stakes in the following entities: Raubex Group Limited (20.60%); WBHO (8.08%); Murray & Roberts (9.3%); Group Five (13.25%); and Basil Read Holdings (5.92%). These entities have activities in the construction industry and compete with Concor Holdings.
- [12] The Commission considered, among other factors, the history of collusion in the construction sector and found that were the GEPF to appoint the same directors in the firms that it holds non-controlling interests, these structural links could allow for the sharing of competitively sensitive information among competitors.
- [13] To address these information exchange concerns, the Commission and the merging parties tendered the imposition of a condition restricting the GEPF from appointing the same individuals that serve on the board or management committees of either Raubex Group Limited, Wilson Bayley, PPC Limited, Murray & Roberts, Group Five and Basil Read Holdings to serve on the board or management committees of the Target Group. We have imposed the tendered proposal as a condition to the approval of the merger.

[14] Having considered the above, we find that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

### **Public interest assessment**

#### *Employment*

[15] The merging parties submitted that there will be no retrenchments or job losses as a result of the proposed transaction. In addition, both merger parties' employee representative did not raise concern with the proposed transaction.

[16] We find that the proposed transaction is unlikely to raise any employment concerns post-merger.

#### *Conclusion on public interest*

The proposed transaction raised no other public interest concerns.

### **Third party views**

[17] No third parties, whether customers or competitors, expressed concerns about the proposed merger to the Tribunal.

### **Conclusion**

[18] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any significant public interest concerns.

[19] We therefore approve the proposed transaction subject to the conditions attached hereto as Annexure A.

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**Prof. Imraan Valodia**

**11 July 2024**

**Date**

**Adv. Anisa Kessery and Ms. Andiswa Ndoni concurring.**

Tribunal Case Manager: Theodora Michaletos  
For the Merging Parties: Wade Graaff of ENS Africa  
For the Commission: Wiri Gumbie, Makati Seekane and Ratshi  
Maphwanya