

SOUTH AFRICA / JUDGMENT

Government Employees Pension Fund v Menlyn Maine Investment Holdings (Pty) Ltd (LM009Apr21) [2021] ZACT 51 (27 July 2021) [2021] ZACT 51

COURT
Competition Tribunal

BEFORE
Enver Daniels, Imraan Valodia, Thando Vilakazi

CASE / FILE NUMBER
LM009Apr21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM009Apr21

In the matter between:

Government Employees Pension Fund

Primary Acquiring Firm

And

Menlyn Maine Investment Holdings (Pty) Ltd

Primary Target Firm

Panel:

Mr Enver Daniels (Presiding Member)

Prof Imraan Valodia (Tribunal Member)

Dr Thando Vilakazi (Tribunal Member)

Heard on: 27 July 2021

Order Issued on: 27 July 2021

ORDER

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

1. the merger between the abovementioned parties be approved in terms of section 16(2)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition

Tribunal Rule 35(5)(a).

Presiding Member

Mr Enver Daniels

27 July 2021

Date

Concurring: Prof Imraan Valodia and Dr Thando Vilakazi

Case no: LM009Apr21

Government Employees Pension Fund (Primary Acquiring Firm)

and

Menlyn Maine Investment Holdings (Pty) Ltd (Primary Target Firm)

Heard on: 27 July 2021

Order Issued on: 27 July 2021

REASONS

FOR DECISION

- [1] On 27 July 2021, the Competition Tribunal unconditionally approved a large merger between the Government Employees Pension Fund ("GEPF") and Menlyn Maine Investment Holdings (Pty) Ltd ("MMIH").
- [2] GEPF intends to acquire sole control over MMIH's undivided share of Redevelopment Erf 3 and its share of the rental enterprise known as Central Square, Menlyn Maine ("Target Property").
- [3] The GEPF is represented by the Public Investment Corporation SOC Ltd ("PIC") and controlled by its Board of Trustees. The GEPF holds interests in multiple firms, including MMIH. The PIC is controlled by the South African government.
- [4] Pre-merger, the shares in MMIH are held by African Spirit Trading 306 (Pty) Ltd, Kgware Investments (Pty) Ltd, Henk Boogertman, GEPF, and African Spirit Trading 309 (Pty) Ltd.
- [5] The GEPF is a defined benefit pension fund that manages and administers pensions and other benefits for government employees in South Africa. The PIC, on behalf of the GEPF, invests in various classes of assets including equities, property and fixed income.

[6] The Target Property comprises of a retail component, a gymnasium, office space, and retail/business premises.

[7] When assessing the merging parties' activities, the Commission identified a horizontal overlap as the GEPF holds controlling and non-controlling interests in various firms that are active in the property industry, and which compete with the Target Property. This finding 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.

[8] In assessing the potential coordinated effects of the proposed transaction, the Commission noted that, as a shareholder in multiple

firms that compete with the Target Property, the GEPF has the ability to appoint directors in numerous firms in which it holds shares. The Commission highlighted two firms in which the GEPF can appoint directors or has control: SA Corporate Real Estate[1] (in which the GEPF has a non - controlling interest and one director) and Growthpoint[2] (in which the GEPF also has a non - controlling interest and one director).

[9] Because the Target Property competes with Brooklyn Mall, which is controlled by Growthpoint and on whose board the PIC is represented, the Commission considered the extent to which coordinated effects could arise. In addressing this concern, the Commission considered the PIC's Integrity Walls Policy ("the Policy"),

[...] The Commission therefore highlighted the fact that, because the Target Property is unlisted, while Growthpoint is listed,

[...] any sensitive information will not be exchanged. [...]

[10] Based on the fact that the Target Property and Growthpoint will be managed in separate divisions, and the [...] the Commission is of the view that there are sufficient measures in place to alleviate any information sharing concerns that might arise as a result of the proposed transaction.

[11] The Commission was therefore of the view that the proposed merger is unlikely to substantially prevent or lessen competition.

[12] The merger raises no public interest concerns.

[13] 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 public interest.

Signed by: Enver Daniels

Signed at: 2021-07-27 16:54:20 +02:00

Reason: Witnessing Enver Daniels

27 July 2021

Mr Enver Daniels

Date

Dr Thando Vilakazi and Prof Imraan Valodia concurring.

Tribunal Case Manager: Camilla Mathonsi

For the Merging Parties: Andries Le Grange and Nelisiwe Khumalo of CDH

For the Commission: Thabelo Masithulela and Sewela Moshoma

- [1] SA Corporate controls Willow Way Shopping Centre which is considered a Neighbourhood Shopping Centre with a GLA of approximately 7 933 square meters and located 5.5km away from the Target Property. However, based on case law, Willow Way Shopping Centre cannot be considered as a competitive constraint due to its size.
- [2] Growthpoint controls Brooklyn Mall which is located 6.1km away from the Target Property and which is considered a regional shopping centre with a GLA of approximately 81 850 square metres.
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Prepared on 11 October 2026 · Esheria