

SOUTH AFRICA / JUDGMENT

Government Employees Pension Fund v Siyanda Resources (Pty) Ltd (LM15Aug15) [2015] ZACT 82 (4 November 2015)

[2015] ZACT 82

COURT

Competition Tribunal

BEFORE

Medi Mokuena, Anton Roskam, Andiswa Ndoni

CASE / FILE NUMBER

LM15Aug15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM15Aug15

In the matter between:

GOVERNMENT EMPLOYEES PENSION FUND

Acquiring Firm

And

SIYANDA RESOURCES (PTY LTD)

Target Firm

Panel

: Medi Mokuena (Presiding Member)

:Anton Roskam (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on

: 21 October 2015

Order Issued on

: 21 October 2015

Reasons

Issued on : 4 November 2015

Reasons

for Decision

Approval

[1] On 21 October 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between the Government Employees Pension Fund ("GEPF") and Siyanda Resources (Pty) Ltd ("Siyanda Resources").

[2] The reasons for approving the proposed transaction follow.

Parties to transaction and their Activities

Primary acquiring firm

[3] The primary acquiring firm is GEPF, a juristic person established in terms of section of the Government Employees Pension Law, No. 21 of

1996. The GEPF is represented by the Public Investment Corporation SOC Limited ("PIC") and is controlled by the GEPF Board of Trustees. The PIC is wholly-owned and controlled by the South African Government. GEPF controls a number of firms.

[4] The GEPF manages and administers pensions and other benefits for government employees. In doing so, it invests in various classes

of assets Including equity, property and fixed income. The PIC is a registered financial service provider and the only asset manager

which serves the South African public sector. It is responsible for the investment needs of a wide range of public sector pension,

provident, social security, development and guardian funds. The PIC is authorised to manage the equity, bonds, money market and property portfolios of the GEPF.

Primary target firm

[5] The primary target firm is Siyanda Resources, a private company incorporated in accordance with the laws of the Republic of South Africa. It is controlled by Siyanda Investments Management (Pty) Ltd ("Siyanda Investments"). Siyanda Resources controls a number of firms.

[6] Siyanda Resources is a resources investment holding company which focuses on investments in coal, precious and base metal, industrial

minerals and chrome operations.

Proposed transaction and rationale:

- [7] The proposed transaction stems from a subscription agreement and shareholders agreement between Siyanda Investments and the PIC. In terms of the subscription agreement, the PIC acquired 30% of Siyanda Resources' share capital whilst Siyanda Investments held 70%. The shareholders agreement provided the PIC with certain minority rights which were conditional upon the adoption of the MOI. In the present transaction, the merging parties intend to adopt the MOL Post-merger, the PIC and Siyanda Investments will have joint control over Siyanda Resources.
- [8] The PIC submits that the proposed transaction presents a sound investment opportunity which is aligned with critical socio-economic initiatives. The Siyanda Group submits that the proposed transaction ties in with its long-term strategy to grow the business into a sizable industrial leader within the South African economy. Further, the business relationship is expected to be mutually beneficial as the group will utilise the in-house skills to develop various projects to the benefit of both parties and the South African economy as a whole.

Impact on Competition:

- [9] The Competition Commission ("Commission") considered the activities of the merging parties and found that there are no overlaps between them. The target firm is an investment company with interests in the mining sector. It holds interests in the markets for chrome mining, ferrochrome producing and platinum mining whilst the PIC does not hold any controlling interests in firms that are active in these markets.
- [10] The Commission therefore concluded that the proposed transaction is unlikely to substantially lessen or prevent competition in the relevant market.

Public Interest:

- [11] The Commission concluded that there are no public interest concerns likely to arise from the proposed transaction.

Conclusion:

- [12] In light of the above, we agree with the Commission's analysis and conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. In addition, no public interest issues arise from the proposed transaction.

4 November 2015

DATE

Medi Mokuena

Anton Roskam and Andiswa Ndoni concurring

Tribunal Researcher: Ammara Cachalia

For the merging parties: Ahmore Burger-Smidt, Werksmans Attorneys Shawn van der Meulen, Webber Wentzel Inc.

For the Commission: Thato Mkhize

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