

SOUTH AFRICA / JUDGMENT

Government Employees Pension Fund v Trevenna Precinct Office Development (68/LM/Jun08) [2008] ZACT 74 (12 September 2008) [2008] ZACT 74

COURT

Competition Tribunal

BEFORE

N Manoim, U Bhoola, Y Carrim

CASE / FILE NUMBER

68/LM/Jun08

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COMPETITION TRIBUNAL OF SOUTH AFRICA

In the matter between:

Case No: 68/LM/Jun08

Government Employees Pension Fund Acquiring firm

And

Trevenna Precinct Office Development Target firms

Panel : N Manoim (Presiding Member); U Bhoola (Tribunal Member) and Y Carrim (Tribunal Member)

Heard on : 14 August 2008

Decided : 14 August 2008

Reasons

Issued : 12 September 2008

Reasons

for Decision

Approval

- [1] On 14 August 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Government Employees Pension Fund and Trevenna Precinct Office Development unconditionally. The reasons appear below.

Parties

- [2] The primary acquiring firm is Government Employees Pension Fund (“GEPF”), a juristic person established by section 2 of the Government Employees Pension Fund Law Act 21 of 1996. The Public Investment Corporation Ltd (“PIC”) is a duly authorised representative of the GEPF.¹ The entire issued share capital of the PIC is held by the Government of the Republic of South Africa and its representative is the Minister of Finance.
- [3] The primary target firm is Trevenna Precinct Office Development (“Trevenna”). Trevenna is wholly controlled by Trevenna

Development Co (Pty) Ltd. ²

Transaction

- [4] In terms of the agreement entered into between the GEPF, represented by PIC, and Trevenna Development Co (Pty) Ltd, GEPF would acquire an undivided 51% interest in the letting enterprise known as Trevenna.

Rationale of transaction

- [5] From the GEPF/PIC perspective the transaction forms part of the PIC’s property strategy to increase its investment in fixed properties.
- [6] From the sellers perspective the rationale is two fold. Firstly the transaction provides an opportunity for the current shareholders to realise a portion of their investment. Secondly the PIC and Government have the ability to attract quality, tenants in the form

of government departments or quasi government institutions and hence partnering with the GEPF/PIC allows the conclusion of attractive long term lease agreements.

Parties Activities

- [7] The parties submit that the GEPF is a pension fund which owns various assets which are managed by the PIC. According to the parties the GEPF assets are invested in various assets classes including equities, fixed interests instrument, money market instruments and properties.³
- [8] Trevenna is a grade A office property development located in Sunnyside, Pretoria.

Competition

Analysis

[9] The transaction results in an overlap in the activities of the merging parties in respect of grade A office properties. According to the parties the acquiring firm's grade A office property is in Hatfield and Trevenna and the target firm's property is situated in Sunnyside. An examination of the market by the Commission revealed that post merger the merging parties will have 7.8% combined market share in the broader node including Pretoria CBD, Sunnyside, Arcadia and Hatfield/Hillcrest. We agree with the Commission that the post merger market share is relatively low to raise any competition concerns.

Conclusion

[10] Based on the above the transaction will not result in a substantial lessening or prevention of competition and is accordingly approved unconditionally. In addition there are no public interest issues.

_____ 12 September 2008

Y Carrim Date

Tribunal Member

U Bhoola and N Manoim concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Jowell Glyn Marais Inc

For the Commission : Linda Chung (Mergers and Acquisitions)

1 The PIC was created by the Public Investment Corporation Act 23 of 2004 and is authorized to provide for the investment of certain money received or held by or on behalf of the Government of the Republic

of South Africa and certain other bodies, councils and funds.

2 The shareholders of Trevenna development Co are Atterbury Property (Pty)Ltd 27.5%; Village Trust 25%; Atterbury Property Development

(Pty)Ltd 10%; Attacq Property Fund Ltd 10%; Atterbury Property Holdings (Pty)Ltd 10%; Sudden Impact Investments 4 (Pty)Ltd 8%; HC Bezuidenhout 6% and PJ Jordaan 3.5%.

3 The parties submit that the properties that form part of the asset portfolio include office property, retail property, industrial property and residential property located in most provinces nationwide.

3

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