

SOUTH AFRICA / JUDGMENT

Government Employees Pension Fund v Trevenna Development Company (Pty) Ltd in respect of the Trevenna Building (017640) [2013] ZACT 98 (1 October 2013)

[2013] ZACT 98

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Andiswa Ndoni, Mondo Mazwai

CASE / FILE NUMBER

017640

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017640

In the matter between

Government Employees Pension FundAcquiring Firm

And

Trevenna Development Company (Pty) Ltd

Panel

Andreas Wessels (Presiding Member)

Andiswa Ndoni (Tribunal Member)

Mondo Mazwai (Tribunal Member)

Heard on

25 September 2013

Order issued on

25 September 2013

Reasons

issued on :

01 October 2013 Decision

in respect of the Trevenna Building Target Firm

Approval

- [1] On 25 September 2013, the Competition Tribunal (“Tribunal”) unconditionally approved the merger between the Government Employees Pension Fund (“the GEPF”) and Trevenna Development Company (Pty) Ltd (“Trevenna”) in respect of the Trevenna Building.
- [2] The reasons for approving the proposed transaction follow.

Parties to transaction

- [3] The primary acquiring firm is the GEPF. The GEPF was established in terms of the Government Service Pension Act, 57 of 1973, which has been repealed. It continues to exist as a juristic person by virtue of the Government Employees Pension Law, 1996. The GEPF is a pension fund and has as its purpose the administration and management of pensions and other benefits for its members. The GEPF’s funds are invested in a variety of assets, including property.¹ Of relevance to the competition assessment of the proposed transaction is its investment in office property. The investment of

the GEPF’s assets is managed by the Public Investment Corporation SOC Limited (“the PIC”) in terms of an investment mandate. The PIC manages the equity, bonds, money market and property portfolios of the GEPF.

- [4] The target property is the Trevenna Building. The GEPF and Trevenna are the registered co-owners of the Trevenna Building. Trevenna is a property development and investment company. Trevenna holds a 49% undivided share and the GEPF holds a 51% undivided share in the immovable property and letting enterprise described as Erf 89 Trevenna Township and Portion 479 of the farm Elandspoort no. 357 (hereinafter referred to as “the target property”). According to the Commission’s findings, the target property is an A-Grade office property development in Sunnyside, Pretoria.

Proposed transaction and rationale

- [5] In terms of the proposed transaction the GEPF will acquire from Trevenna as a going concern a 49% undivided share in the target property and letting enterprise. On implementation of the proposed transaction, the GEPF will have sole control of the target property.
- [6] The GEPF submitted that the target property falls within the strategy and investment mandate of the GEPF and this transaction presents an opportunity for the GEPF to grow the size and value of its property portfolio. Trevenna, on the other hand, submitted that the proposed transaction presents an opportunity to liquidate its interest in the target property.

Competition assessment

- [7] The activities of the merging parties overlap with regards to rentable office property. The Commission defined the relevant market as the market for the provision of rentable A-Grade office space within a 5 km radius from the target property, which geographic area includes Sunnyside, Hatfield, Arcadia and the Pretoria CBD. The merged entity will have an estimated post-merger market share of less than 15% in such market.
- [8] However, there is no need for us in this case to take a definitive view on the exact scope of either the product or the geographic market. The merged entity's post-merger market shares remain low regardless of the precise market delineation.² We therefore conclude that the proposed transaction is unlikely to raise competition concerns in any relevant market.

Public interest

- [9] The merging parties confirmed that the proposed transaction will have no adverse effect on employment³ and the proposed transaction raises no other public interest concerns.

CONCLUSION

- [10] We approve the merger unconditionally.

Andreas Wessels

01 October 2013

DATE

Andiswa Ndoni and Mondo Mazwai concurring

Tribunal researcher: Caroline Sserufusa

For the merging parties: J S Marais of Adams & Adams

For the Commission: Lana Norton

¹See pages 16, 36 and 37 of the merger record.

²See merger record pages 40 to 44.

³See merger record pages 6 and 45.

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