

SOUTH AFRICA / JUDGMENT

Municipal Employees Pension Fund v ERF Bryanston (Pty) Ltd (LM098Oct21) [2021] ZACT 109 (15 December 2021)

[2021] ZACT 109**COURT**

Competition Tribunal

BEFORE

Andreas Wessels, Mondo Mazwai, Yasmin Carrim

CASE / FILE NUMBER

LM098Oct21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM098Oct21

Municipal Employees Pension Fund (Primary Acquiring Firm)

and

ERF [...] Bryanston (Pty) Ltd

(Primary Target Firm)

REASONS**FOR DECISION**

- [1] On 13 December 2021, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger between the Municipal Employees Pension Fund (“MEPF”) and ERF [...] Bryanston (Pty) Ltd (“ERF [...]”), in respect of the letting enterprise known as Nicol Way Shopping Centre (“the Target Property”).
- [2] Pre-merger, Reabay Investments (Pty) Ltd (“Reabay”) effectively owns 100% of ERF [...].
- [3] The Target Property is a community centre as defined by the South African Property Association and is located in William Nicol Drive and Wedgewood Link, Bryanston, Gauteng. The Target Property comprises of the following:
 - a. Nicol Way Shopping Centre with a gross rentable area of 23 304 m2.

- b. Nicol Way East 1, with a gross rentable area of 3 654 m².
- c. Nicol Way West, an office block development with rentable area of 4 001 m².

[4] The proposed transaction involves the acquisition of the Target Property by the MEPF, including the property as well as the rights in and to the leases and all other assets necessary for carrying out the enterprise from ERF [....] .

Competition assessment

- [5] The Competition Commission (“Commission”) identified a horizontal product overlap in the activities of the merging parties in the provision of rentable retail space. The Commission however found that the closest retail property of the MEPF is located more than 45 km away from the Target Property and therefore concluded that there is no geographic overlap in the activities of the merging parties.
- [6] Given the above, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We concur with this finding.

Public interest

- [7] ERF [....] has 8 employees. The merging parties submitted that the MEPF has resolved to re-employ the 8 employees employed by ERF [....] . Therefore, the proposed transaction will have no negative effect on employment.
- [8] The MEPF has a total of 26 283 members. Of the total members, more than 95% of the active members are from historically disadvantage backgrounds. In concluding the acquisition of ERF [....] , the transaction will facilitate beneficial ownership of economic profits that will accrue to the members of the fund.
- [9] The proposed transaction raises no other public interest concerns.

Conclusion

- [10] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Furthermore, the proposed transaction raises no public interest concerns.

Date: 15 December 2021

Mr Andreas Wessels

Ms Mondo Mazwai and Ms Yasmin Carrim concurring

Tribunal Case Manager: Kameel Panchm

For the Merging Parties: Ipeleng Mompoti

For the Commission: Portia Bele and Grashum Mutizwa

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