



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:90/LM/OCT11

In the matter between:

Government Employees Pension Fund

Acquiring Firm

And

Pareto Limited

Business Venture Investment No.1360 (Pty) Ltd

Target Firms

Panel : Norman Manoim (Presiding Member),
Yasmin Carrim (Tribunal Member)
Andreas Wessels (Tribunal Member)
Heard on : 14 December 2011
Order issued on : 14 December 2011
Reasons issued on : 12 January 2012

Reasons for Decision

Approval

1] On 14 December 2011 the Competition Tribunal ("Tribunal") approved the large merger between Government Employees Pension Fund ("acquiring firm") and Pareto Limited and Business Venture Investment No.1360 (Pty) Ltd ("target firms"). The Tribunal's reasons for approving the transaction are set out below.

The Parties to the transaction

- 2] The primary acquiring firm is firm is The Government Employees Pension Fund¹ (“GEPF”), a juristic entity established in terms of its own empowering legislation² represented herein by the Public Investment Corporation³ (“PIC”). PIC is owned by the South African Government and acts as an investment portfolio manager for GEPF. The fiduciary duties of GEPF are the responsibility of its Board of Trustees, which acts in conjunction with an equal number of employer and member representatives.
- 3] GEPF is Africa’s largest pension fund with more than 1.2 million active members, around 318 000 pensioners and beneficiaries, and assets worth R700 billion. GEPF is a defined benefit pension fund that was established in May of 1996 when various public sector funds were consolidated. GEPF’s core business is to manage and administer pensions and benefits for government employees in South Africa.⁴
- 4] GEPF is invests in equities, property, fixed income and in black economic empowerment and infrastructure development projects that help to create jobs, alleviate poverty and transform the economy. Of relevance to the present transaction however, is GEPF’s involvement in the provision of rentable shopping space and the provision of asset or property management services. The GEPF property portfolio includes office property, retail property, industrial property and residential property all over South Africa.
- 5] The primary target firms in this transaction are Pareto Limited⁵ (“Pareto”) and Business Venture Investment No.1360 (“BVI”). Pareto is an unlisted property variable loan stock company which invests in immovable property

1 <http://www.gepf.gov.za/Pages/Home.aspx>

2 Government Employees Pension Law of 1996, as amended.

3 <http://www.pic.gov.za/Inveloper.asp?iP=7&iVdate=09/12/2011&iS={747BB555-D29D-435E-A5F4-2792F66AA7ED}>

4 <http://www.gepf.gov.za/Pages/Home.aspx>

5 <http://www.pareto.co.za/>

with a focus on acquiring and developing major retail centres in South Africa. Pareto owns *'inter alia'* numerous stakes in major shopping centres in Johannesburg, Cape Town, Bloemfontein and Durban.

- 6] BVI, which was formed in 2009/10, is a vehicle utilised to hold additional property investment outside the Pareto structure so as not to contravene Regulation 28 of the Pension Funds Act⁶ which restricts a pension fund's investment in any one property company to no more than 5% of the total assets of the fund. BVI is therefore also active in the provision of retail property, community shopping centres, small regional shopping centres and super regional shopping centres.

Description and rationale for the transaction

- 7] In terms of the Sale and Purchase Agreement between the merging parties, GEPF, which already 40% of the issued share capital in the target firms, intends to acquire the entire issued share capital of Pareto and BVI. On completion of this transaction, GEPF will therefore acquire control⁷ of the two target firms.

- 8] Eskom Pension and Provident Fund ("EPPF") currently holds the remaining 60% issued share capital in the target firms and seeks to reduce its interest due to it being more than 5% of the total assets of the fund and is therefore in contravention of Regulation 28 of the Pension Fund Act.

Competition Analysis

- 9] In its investigation, the Commission found that the activities of the merging parties overlap horizontally in that the merging parties are active in the provision of rentable retail space, specifically small regional centre and community shopping centres.

⁶ Act 24 of 1956

⁷ As defined in section 12(2)(a) of the Competition Act 89 of 1998.

10]With regards to rentable retail space for community shopping centres in Johannesburg, Southgate Value Market, owned by Pareto and The Wedge at Morningside, owned by GEPF, are approximately 22 kilometres apart and were therefore not regarded as being part of the same market.

11]In respect of Tyger Valley Centre and V&A Waterfront, which are both regional shopping centres in Cape Town, the Commission found that there is no overlap in terms of target markets due to both competitors and customers' comments highlighting that the two centres were in different markets.

12]The Commission defined the market herein as the market for the provision of community shopping centres in Cape Town and surrounding areas located within 11 kilometres of the merging parties' retail property; and the market for the provision of small regional shopping centres in Cape Town and surrounding areas located within 35 kilometres of the merging parties' retail property.

13]With respect to the provision of community shopping centres in the Cape Town area the Commission found that the merged entity will have approximately 10% market share.

14]With regards to the provision of small regional shopping centres in the Cape Town Area, the Commission found that the merged entity will have approximately 14% market share.

15]The Commission also further found that Cavendish Square, co-owned by OMLACSA and BVI caters for customers in higher LSM⁸ categories while Vangate Mall, owned by GEPF caters for customers in lower LSM categories.

16]Further, based on third party views and comments, barriers to entry into

8 LSM is an acronym for 'Living Standards Measure'. This measure profiles the market into homogenous groups based on standards of living, rather than on income. The standard of living is measured by adding the weighting ascribed to certain household products, commodities or services which would typically be available to persons in those groups. See Tribunal Case No: 04/LM/Jan09.

this market are not insurmountable and tenants of the merging parties have countervailing power in that they can negotiate better rental and they have alternative shopping centres where they can set up their stores.

17]The proposed transaction does not present any vertical overlaps.

18]In light of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the aforementioned markets. We agree with the Commission's conclusion.

Conclusion

19]The proposed transaction is unlikely to raise any public interest concerns as it is a transfer of shares from one entity to another.

20]We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition and accordingly, the above merger is approved without conditions.

N Manoim

12 January 2012
Date

Y Carrim and A Wessels concurring.

Tribunal Researcher: Songezo Ralarala

For the merging parties: Lerisha Naidu and Natalie von Ey of Cliffe Dekker Hofmeyr

For the Commission: Mogau Aphane and Nompucuko Nontombana