



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018903

In the matter between:

**Business Venture Investments No. 1697
(Pty) Ltd and Government Employees
Pension Fund**

Acquiring Firms

And

Menlyn Maine Investment Holdings (Pty) Ltd

Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	13 August 2014
Order issued on	:	13 August 2014
Reasons issued on	:	10 September 2014

Reasons for Decision

Approval

1. On 13 August 2014 the Competition Tribunal (the "Tribunal") unconditionally approved an acquisition by Business Venture Investments No. 1697 (Pty) Ltd ("BVI") and the Government Employees Pension Fund ("GEPPF") of Menlyn Maine Investment Holdings (Pty) Ltd ("Menlyn Maine").
2. The reasons for the approval of the proposed transaction follow.

The Parties and their activities

3. The primary acquiring firms are BIV and the GEPF. BVI is 100% controlled Billy Lesedi Masetlha ("Masetlha"). BVI does not directly or indirectly control any firms. The GEPF is controlled by the GEPF Board of Trustees comprising of 16 Trustees appointed in terms section 6 of the Government Employee Pension Law of 1996. The GEPF controls the following firms: ADR International Airports South Africa (Pty) Ltd ("ADR"), Pareto Ltd ("Pareto"), Business Venture Investments (Pty) Ltd ("Business Venture"), Community Property Fund ("CPF"), CBS Property Portfolio (Pty) Ltd ("CBS") and Lexshell 44 General Trading (Pty) Ltd ("Lexshell").
4. BVI is newly incorporated and has not traded before and therefore does not provide any products or services. The GEPF's core business is to manage and administer pension funds and other benefits for government employees thorough investments in four classes of assets, i.e. equities, property, fixed income and Isibaya fund.
5. Relevant for this transaction is the GEPF's ownership of a Grade P office property, namely Riverwalk Office Park, situated in Ashlea Gardens, Pretoria.¹
6. The primary target firm is Menlyn Maine, a firm incorporated in terms of the Laws of the Republic of South Africa. Menlyn Maine is jointly controlled by African Spirit Trading 309 (Pty) Ltd ("African Spirit 309") and African Spirit Trading 306 (Pty) Ltd ("African Spirit 306"). African Spirit 309 and African Spirit 306 each have 28.17% shareholding in Menlyn Maine. The remaining non-controlling shares are held by BVI (25.01%) and the GEPF (18.65%). Menlyn Maine directly controls Applewood Trading 80 (Pty) Ltd and Business Venture Investment Holdings 1565 (Pty) Ltd.

¹ For a list of all the properties owned by the GEPF see Annexure CR1.

7. Menlyn Maine is a firm which acquires, develops and/or co-develops properties in South Africa. It owns half of an office block known as the Pegasus office block which is currently under construction. The Pegasus office block is situated in Menlyn, Pretoria and will constitute rentable Grade P office property. In addition, Menlyn Maine is the developer of a mixed-use property development known as Menlyn Maine Precinct. Menlyn Maine Precinct is located in Waterkloof, Pretoria, and will consist of residential, retail and offices premises as well as restaurants, a gym, spa, hotel and medical facilities.

Proposed transaction and rationale

8. Prior to February 2014, African Spirit 309 and African Spirit 306 jointly controlled Menlyn Maine, with each holding 50% shareholding. In February 2014 BVI and the GEPPF subscribed for 25.01% and 18.65% shareholding respectively in Menlyn Maine. The shareholdings of the two African Spirit companies were diluted to the present 28.17% each. This acquisition was not notified at the time. The reason for not notifying the transaction according to the parties was that BVI's 25.01% and the GEPPF's 18.65% shareholding in Menlyn Maine did not confer any form of control in them over Menlyn Maine.
9. In this proposed transaction there is no change to the respective shareholdings in Menlyn Maine, they remain as they were in February 2014. The reason the transaction is now considered notifiable by the merging parties is that shareholders intend to amend the existing Memorandum of Incorporation ("MOI") to afford BVI and the GEPPF with certain minority protection rights in Menlyn Maine. These minority protection rights give each shareholder a veto over certain resolutions and hence each could be considered a joint controller. Hence, post-merger, Menlyn Maine will be jointly controlled by African Spirit 309, African Spirit 306, BVI and the GEPPF.

10. The rationale for BVI and the GEPF is that they want to protect their respective interests and ensure that they are part of the strategic decision making within Menlyn Maine.
11. Menlyn Maine submitted that it requires the support and close co-operation of both BVI and the GEPF to strategically position it going forward and to ensure its future growth and stability.

Competition Analysis

12. The Commission identified a horizontal overlap between the activities of the merging parties in respect of the market for rentable Grade P office property. In relation to the relevant geographic market, the Commission considered the competitive effects of this transaction within a 5 kilometer radius from Menlyn Maine. This area includes the following nodes: Menlyn, Faerie Glen, Ashlea Gardens, Lynnwood, Menlo Park and Hazel Wood nodes.
13. In relation to market shares, the Commission not only considered the merging parties' current market shares, but also took into account potential office property developments that would commence in the future at Menlyn Maine Precinct. The Commission estimated that the merging parties' post-merger market shares for future rentable Grade P office developments in the Menlyn Maine Precinct and surroundings are approximately 42.4%, although the accretion is insignificant. The Commission however found that the merger is unlikely to substantially prevent or lessen competition in the market for rentable Grade P office in the future because several of the competitors own land in the same area and have developments rights for office property. Thus even though the present market share is high, the potential for future development by

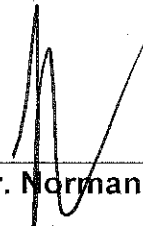
credible competitors appears timely, likely and sufficient to constrain any post-merger exercise of market power.²

Public interest

14. The merging parties confirmed that the proposed transaction will have no adverse effect on employment and will not result in any retrenchments in South Africa.³ The proposed transaction raises no other public interest concerns.

Conclusion

15. For the reasons mentioned above, we approve the proposed transaction unconditionally.



Mr. Norman Manoim

10 September 2014
Date

Ms. Yasmin Carrim and Mrs Medi Mokuena concurring

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Ahmore Burger-Smidt of Werksmans

For the Commission: Grace Mohamed

² About 57% of the market belongs to competitors such as Neo Trend, Eris Property Group and Metro Investments who own these rights.

³ See merger record, pages 11. Also see paragraph 8 of the Commission's merger report.