



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM287Feb18**

In the matter between

**Government Employees Pension Fund  
(represented by the Public Investment Corporation  
SOC Ltd)**

**Primary Acquiring Firm**

And

**CPV Power Plant No. 1 Equity SPV (RF) (Pty) Ltd**

**Primary Target Firm**

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| Panel             | : Norman Manoim (Presiding Member) |
|                   | : Imraan Valodia (Tribunal Member) |
|                   | : Andiswa Ndoni (Tribunal Member)  |
| Heard on          | : 11 April 2018                    |
| Order Issued on   | : 11 April 2018                    |
| Reasons Issued on | : 2 May 2018                       |

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### REASONS FOR DECISION

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#### Approval

[1] On 11 April 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction in terms of which the Government Employees Pension Fund ("GEPF") is acquiring the entire share capital in CPV Power Plant No.1 Equity SPV (RF) (Pty) Ltd ("Equity SPV").

[2] The reasons for the approval of the proposed transaction follow.

## Parties to the transaction

### *Primary Acquiring Firm*

- [3] GEPF is a pension fund<sup>1</sup> and is not controlled by any firms. GEPF is represented by the Public Investment Corporation SOC Limited ("**PIC**"), which is wholly-owned by the South African Government and acts as an asset and fund manager to the GEPF. By virtue of this relationship, the PIC is regarded as the acquiring firm.
- [4] The GEPF administers and manages pensions and other benefits for civil servants, whereas the PIC acts as fund manager with the mandate to invest on behalf of the GEPF and other clients. The PIC is the only asset manager that serves South Africa's public sector exclusively.
- [5] The PIC's investment portfolio spans across multiple industries, *inter alia*, financial services, construction and mining. Of relevance to the proposed transaction, are the nine solar renewable energy independent power producers (IPP projects-hereafter referred to as the "**PIC-aligned IPPs**") the PIC (on behalf of GEPF and other clients) has non-controlling interests in.<sup>2</sup> These PIC-aligned IPPs supply solar power to the Eskom national grid through *Power Purchase Agreements* ("PPA").

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<sup>1</sup> As defined in the Government Employees Pension Law (The governing law of the GEPF).

<sup>2</sup> The activities of each PIC-aligned IPP are outlined in the CC recommendation, pages 11 & 12.

### *Primary Target Firm*

- [6] Equity SPV is a wholly-owned subsidiary of Soitec GmbH<sup>3</sup> ("Soitec"), which was established for the purpose of holding a 40% controlling interest in CPV Power Plant No.1 (RF) (Pty) Ltd ("CPV").<sup>4</sup> CPV in turn controls CPV Power Plant No.1 Bond SPV (RF) Ltd ("CPV Bond Ltd").<sup>5</sup>

### **Proposed transaction and rationale**

- [7] It is intended that the proposed transaction be done in two phases. In terms of the *Amended and Restated Shareholders Agreement* it involves the conversion of preference shares held by GEPF in Equity SPV into ordinary shares, and following the conversion, Equity SPV will repurchase its ordinary shares from Soitec. Pursuant to the conversion of the preference shares and the share repurchase, post-merger, the GEPF will hold 100% of Equity SPV's entire issued share capital, and acquire direct sole control over Equity SPV and an indirect control over CPV as envisaged in section 12(2)(g) of the Competition Act, 89 of 1998 (as amended).

### **Relevant market and impact on competition**

- [8] The Commission noted that the PIC has non-controlling interests in nine other IPPs. The Commission further found that competition in this market occurs during the bidding process before services are rendered.
- [9] The bidding process was concluded prior to the merger and the PIC-aligned IPPs and the target firm have already signed exclusive *PPAs* and *Implementation Agreements* with Eskom and the Department of Energy. These agreements regulate prices, escalation rates and other terms and conditions until 2034.

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<sup>3</sup> A company incorporated in accordance with German laws.

<sup>4</sup> CPV is a special purpose vehicle established for the designing, developing, constructing and operating the solar energy plant in Touwsrivier.

<sup>5</sup> CPV Bond Ltd is a special purpose vehicle established for the purpose of implementing funding arrangements in respect of the Touwsrivier energy project.

- [10] The Commission further found that the proposed transaction will not provide the merged entity with the ability to alter the contracts. Therefore, there will be no competition in the market until the contracts expire in 2034. In this regard, the Commission concluded that coordination is unlikely.
- [11] Although we agreed with the submissions made above, we sought clarity on the extent of the supply of solar energy to the national grid by the PIC-aligned IPPs. The merging parties confirmed that the PIC-aligned IPPs constitutes approximately 16% of the power allowance supplied to the national grid.<sup>6</sup>
- [12] In view of the above, the Commission concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. We have no reason to disagree with the Commission's findings.

#### **Public interest**

- [13] The merging parties confirmed that the proposed transaction will not have a negative effect on employment because neither Equity SPV nor CPV employ any workers currently. The Commission is of the view that the proposed transaction is unlikely to raise any employment issues nor will it raise public interest concerns because the transaction involves a restructure of the PIC investment in Equity SPV.

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<sup>6</sup> Correspondence between the merging parties' attorney and the Tribunal.

## **Conclusion**

[14] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.



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**Mr Norman Manoim**

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**2 May 2018**

**Date**

**Ms Andiswa Ndoni and Prof. Imraan Valodia concurring.**

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : B Phillips of Webber Wentzel

For the Commission : R Mokolo and R Maphwanya