

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM214Jan16

In the matter between:

**The Government Employees Pension Fund, duly
represented herein by the Public Investment
Corporation SOC Limited**

Primary Acquiring Firm

And

Mining and Gas Services Proprietary Limited

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member) Imraan Valodia (Tribunal Member) Fiona Tregenna (Tribunal Member)
Heard on	:	17 February 2016
Order issued on	:	17 February 2016
Reasons issued on	:	09 March 2016

Reasons for Decision

Approval

[1] On 17 February 2016, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between The Government Employees Pension Fund ("GEPF"), duly represented herein by the Public Investment Corporation SOC Limited ("PIC") and Mining and Gas Services Proprietary Limited ("MOGS"). The reasons for approving the transaction follow.

Parties to the transaction

[2] The primary acquiring firm is 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 The GEPF was established in terms of the Government Service Pension Act, 57 of 1973, which has been repealed.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 The investment of the GEPF's assets is managed by the Public

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

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 GEPPF.

[3] The Khuseni SPV (RF) Proprietary Limited ("Khuseni SPV") is a special purpose vehicle, which will be formed solely for the purposes of the proposed transaction and thus currently does not conduct any operations.

[4] The primary target firm is MOGS, which is a South African based, black-owned, BEE accredited company. MOGS is controlled by Royal Bafokeng Holdings Proprietary Limited ("RBH"), which is a community based investment company with the overall objective of maximising returns to enable the delivery of sustainable benefits to the Bafokeng community. RBH achieves this objective through a plethora of subsidiaries and associated companies, such as MOGS. MOGS focuses on providing various services to the mining (coal, gold and platinum), oil and gas sectors. through its various interests and subsidiaries, provides services to mining industries both within and outside the borders of South Africa, services to the mining (coal, gold and platinum), oil and gas sectors. MOGS provides these services via the acquisition of significant interests in and/or the development of companies operating with the above-mentioned sectors. These services are provided both within and outside the borders of South Africa. MOGS is active in crude oil blending, operation of petroleum gas importation terminal, pipeline rehabilitation, manufacture of energy systems *inter alia*.

Proposed transaction

[5] The proposed transaction entails GEPPF, through Khuseni SPV, acquiring 49% shareholding in MOGS. Post-merger Khuseni SPV will have joint control over MOGS.

Competition assessment

[6] The Competition Commission ("Commission") considered the activities of the merging parties and found that no overlaps arises from the proposed

transaction. This is because the parties, even through their subsidiaries are not active in the same markets. The acquiring group's activities in the mining sector is limited to non-controlling interests it has in various firms active in contract mining services, material handling, concrete production, logistics, banking, insurance, property, and others. Whilst MOGS is active in crude oil blending, operation of petroleum gas importation terminal, pipeline rehabilitation, manufacture of energy systems *inter alia*. The Commission thus saw no need to conduct any further analysis. The Commission thus concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. We agree with the Commission on its findings.

Public interest

[7] The merging parties confirmed that the proposed transaction will not have any adverse effect on employment in South Africa, instead it will have a positive impact on employment as it has the potential to create employment in the mining, oil and gas sectors.² The proposed transaction raises no other public interest concerns.

CONCLUSION

[8] We agree with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We therefore approve the proposed transaction without conditions.


Mr Norman Manoim

09 March 2016
DATE

Prof. Imraan Valodia and Prof. Fiona Tregenna concurring

Tribunal Researcher:	Caroline Sserufusa
For the merging parties:	Ryan Goodman of ENS
For the Commission:	Reabetswe Molotsi

² See page 71 of the merger record.