



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM021May16

In the matter between:

**Public Investment Corporation SOC Ltd in its
capacity as the duly authorized representative of the
Government Employees Pension Fund, the Unemployment
Insurance Fund and the Compensation Fund** Primary Acquiring Firm

and

N3 Toll Concession (RF) Proprietary Limited Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 08 June 2016
Order Issued on	: 08 June 2016
Reasons Issued on	: 04 July 2016

Reasons for Decision

Approval

- [1] On 8 June 2016, the Competition Tribunal ("Tribunal") approved the large merger between the Public Investment Corporation SOC Ltd in its capacity as the duly authorized representative of the Government Employees Pension Fund, the Unemployment Insurance Fund and the Compensation Fund, and N3 Toll Concession (RF) Proprietary Limited (the target firm).

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm is Public Investment Corporation SOC Ltd ("PIC"), a public company established in accordance with the Public Investment Corporation Act, No.23 of 2004. The PIC acts in its capacity as the duly authorized representative of the Government Employees Pension Fund ("GEPF"), Unemployment Insurance Fund ("UIF"), and the Compensation Fund.

[4] PIC is a registered financial services provider and is the only asset manager that serves South Africa's public sector. It takes care of the investment needs of a number of public sector pension, provident, social security, development and guardian funds.

Primary target firm

[5] The primary target firm is N3 Toll Concession (RF) (Pty) Ltd ("N3TC"), a privately owned company incorporated as a special purpose vehicle for purposes of entering into a concession contract with the South African National Roads Agency Ltd ("SANRAL") relating to the design, construction, financing, operation and maintenance of the N3 Toll Route, which comprises the 415 kilometer section of the N3 Toll Route between Johannesburg and Durban, from the Heidelberg South Interchange in Gauteng to the Cedara Interchange in KwaZulu-Natal for a 30 year period.

Proposed transaction and rationale

[6] The proposed transaction is as a result of SAIF wishing to dispose of its shareholding in three concession companies, namely N3TC, South African Toll Road Company (Pty) Ltd ("SATRC"), and Trans African Concessions (Pty) Ltd ("TRAC"). However, please note that the proposed transaction was only in relation to N3TC. The SATRC¹ and TRAC² disposals by SAIF were filed with the Commission as separate mergers.

¹ The SATRC transaction was an intermediate merger.

² Please see Case No. LM020May16

- [7] The proposed transaction takes place in two stages.³ In terms of stage 1 of the proposed transaction, the PIC and Old Mutual Life Assurance Company (SA) (Pty) Ltd ("OMLACSA") will increase its shareholding in N3TC such that the PIC and OMLACSA will exercise negative control over N3TC. OMLACSA's shareholding will remain the same after Stage 1. Following stage 2, PIC's shareholding will be reduced, such that the remaining shares previously held by the PIC, will be held by Liberty Group Limited and African Finance Corporation. Ultimately, the PIC and OMLACSA will control N3TC post-merger.
- [8] The primary acquiring firm submits that the N3TC concession has operated under an established and transparent concessionary framework since 1999 and there is strong government support for this concession, with various protection mechanisms in place for equity investors. In addition, there also exists an opportunity to extend the investment horizon through the negotiation of concession extensions and the incorporation of new or upgraded roads into concessions.
- [9] The primary target firm submits that the proposed transaction is as a result of SAIF reaching its maturity date. As such, SAIF is disposing of its interests in accordance with the provisions of the trust.

Impact on competition

- [10] The Commission found that the proposed transaction would not result in a horizontal overlap. The PIC is merely increasing its shareholding and thus the transaction does not raise any competition concerns.
- [11] Furthermore, the Commission found that the proposed transaction would not have an effect on the toll rates as N3TC is obligated to charge the gazetted toll rates and cannot deviate from or change the gazetted toll rates.
- [12] The Commission therefore concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market.
- [13] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

³ The transaction took place in two stages as a result of the shareholders agreement and the pre-emptive process that the parties were required to follow. See page 7 of the transcript.

Public interest

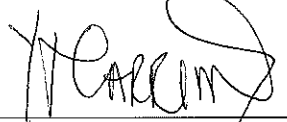
[14] The merging parties confirmed that the proposed transaction will not have a negative effect on employment and merely involved a change in the PIC's quality of control over N3TC. The employees involved in N3TC's concession operations will therefore not be impacted in any way.

[15] The Commission did not receive any concerns related to employment and found that the proposed transaction was unlikely to have a negative effect on employment.

[16] The proposed transaction further raised no other public interest concerns.

Conclusion

[17] In light of the above, we conclude 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 approve the proposed transaction unconditionally.



Ms Yasmin Carrim

04 July 2016

DATE

Ms Mondo Mazwai and Ms Andiswa Ndoni concurring

Tribunal Researcher: Ipeleng Selaledi

For the merging parties: Shawn van der Meulen from Webber Wentzel
representing SAIF. Kitso Tlhabanelo from Cliffe Dekker
Hofmeyr for PIC.

For the Commission: Relebohile Thabane