COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 42/LM/May06

In the large merger between:

Government Employees Pension Fund represented by Public Investment Corporation Limited

and

Denel (Pty) Ltd

Reasons for Decision

Approval

1. On 22 June 2006 the Competition Tribunal issued a merger clearance certificate approving the merger between the Government Employees' Pension Fund represented by Public Investment Corporation Limited and Denel (Pty) Ltd. The reasons appear below.

The Parties

2. The acquiring firm is the Government Employees Pension Fund represented by Public Investment Corporation Limited ("PIC"). The government of South Africa is the sole shareholder in PIC. PIC directly or indirectly controls the following companies:

2.1. ADR International Airports South Africa (Pty) Ltd (100%) ("ADRIASA");[1] and

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1 ADRIASA was acquired from Aeroporti di Roma ("ADR") by PIC on behalf of the Government Employees Pension Fund. ADRIASA holds 20%of the shares in Airports Company of South Africa ("ACSA"). ADRIASA jointly controls ACSA with the Minister of Transport. See PIC/ADRIASA case number 108/LM/Nov05 ("PIC/ADRIASA" case).

2.2. Advent Asset Management (Pty) Ltd (60%).

3. The primary target firm is Bonaero Park (Pty) Ltd (“Bonaero Park”), a property investment company. Bonaero Park is a wholly owned subsidiary of Denel (Pty) Ltd (“Denel”). Denel is wholly owned by the government of South Africa. Denel was incorporated as a company in 1992 in terms of the Companies Act 61 of 1973. Denel also directly or indirectly control other companies including Denel Properties (Pty) Ltd (“Denel Properties”).[2]

The Merger Transaction

4. In terms of the merger agreement, PIC will acquire the entire property portfolio which includes immovable properties and the business of Bonaero Park with regard to leases and the property letting enterprises conducted in respect of such properties, from Denel.[3] These properties comprise commercial office space, retail, and industrial office space located throughout South Africa.

5. The following tables show the office, retail and industrial properties being acquired:[4]

TABLE 1: OFFICE PROPERTY PORTFOLIO BEING ACQUIRED

Property	Geographic Area	Type	Grade
Castle Walk Corporate Park	Pretoria East (Erasmuskloof)	Office	A
Kasteel Park Complex	Pretoria East (Erasmuskloof)	Office	B
Kasteel Park Complex	Pretoria East (Erasmuskloof)	Vacant land	

TABLE 2: RETAIL PROPERTY PORTFOLIO BEING ACQUIRED

Property	Geographic Area	Type	Grade

2 The names of the other companies directly or indirectly controlled by Denel are listed on pages 112-113 of the record, being schedule 3 to Bonaero Park’s Form CC4(2).
3 The properties being acquired exclude the Dendustri factory and residential stand in Erasmuskloof Township that is to be disposed of to Curamed Holding Limited. See pages 93-94 of the record. A copy of the Merger Agreement is on pages 47-87 of the record.
4 PIC’s property portfolio is listed on pages 43 and 44 of the record. The parties have submitted in the e-mail dated 30 June 2006 that these properties are controlled by PIC on behalf of the Government Employees’ Pension Fund.

Castle Walk Garage	Pretoria (Erasmuskloof)	Retail	Neighbourhood Shopping Centre
Castle Walk Shopping Centre	Pretoria East (Erasmuskloof)	Retail	Neighbourhood shopping centre
Waterkloof Lifestyle	Pretoria East (Waterkloof Ridge)	Retail	Neighbourhood shopping centre
Winmore Shopping Centre	Pretoria East (Moreleta Park)	Retail	Neighbourhood shopping centre
Equestria Shopping Centre	Pretoria East (Wilgers)	Retail	Neighbourhood shopping centre
Eastwood Shopping Centre	Pretoria (Arcadia)	Retail	Neighbourhood shopping centre

TABLE 3: INDUSTRIAL PROPERTY PORTFOLIO BEING ACQUIRED

Property	Geographic Area	Type	Grade
Kruger Avenue	Pretoria (Centurion)	Light Industrial	Secondary
Ergon Avenue	Pretoria (Centurion)	Light Industrial	Secondary
Nordey Heights	Pretoria	Residential Area	Single bachelor's flat

Rationale for the Transaction

5.1. PIC intends to increase its property investment portfolio and Denel is in urgent need of cash which this transaction will provide.

The Parties' activities

Primary acquiring firm

PIC

5.2. PIC invests funds on behalf of the public sector entities, including Government Employees Pension Fund. It also has investment interests in properties consisting of commercial, retail and industrial properties located largely in Johannesburg, Mmabatho, Rustenburg and Northern Pretoria regions.

Airports Company of South Africa ("ACSA")

5.3. ADRIASA holds 20% of the issued shares in ACSA. ADRIASA is a wholly owned subsidiary of PIC.[5] Thus PIC, on behalf of the Government Employees' Pension Fund indirectly holds 20% of the shares in ACSA and has joint control with the Minister of transport.[6]

5.4. ACSA develops, provides, maintains, manages and operates airports, parts of airports or any facilities or services that are normally performed at an airport. Such activities include the letting out of retail and office space as well as the installation and integration of computer systems and hotel operations.

Primary target firm

Denel

5.5. Denel is a high technology South African company in the defence and aerospace industry. It concentrates in the product design, development, manufacturing, marketing and product support capabilities in the defence and aerospace industry.

Bonaero Park

5 In the PIC/ADRIASA case PIC acquired 100% of the issued shares in ADRIASA and thus acquired 20% shareholding in ACSA.

6 In the PIC/ADRIASA case PIC acquired 100% of the issued shares in ADRIASA. PIC continues to enjoy the same rights that ADR had in terms of the shareholders' agreement that ADR had with the government. Thus joint control over ACSA was perpetuated. See page 2 of the PIC/ADRIASA reasons and page 448 of the PIC/ADRIASA record.

5.6. Bonaero Park is an investment property company, which generates its income from rentals of commercial office space, retail and industrial space.

The relevant product markets

5.7. The Commission has submitted that grade A, B, C and P office property are different product markets. This grading is based on differences in quality, age, finishing and there are also distinct rentals charged for the different categories of office properties.

5.8. The Commission has further submitted that the product market for industrial space is divided into light industrial space and heavy industrial space, and that the market for retail property is classified according to size. The Commission came to this conclusion on the basis of previous Tribunal decisions.[7]

5.9. We find no reason to differ with the Commission's definition of the relevant product market.

5.10. Indeed the activities of the parties overlap in respect of office, retail and industrial properties. However, as shall be seen below, the overlap is small and does not raise serious competition concerns. Moreover, the properties owned by the merging parties are in different geographic locations and the market shares of the merging parties are small.

The Geographic market

7 For instance Tribunal cases 34/LM/Jul03, 66/LM/Jul05 and 68/LM/Jul05.

5.11. The Commission has submitted that the market in relation to office space is local. The IPD has identified different nodes in consultation with market participants and South African Property Owners' Association ("SAPOA"). Different geographic areas that compete with each other are grouped into nodes. Market players usually compete with each other in the same node and properties in the same nodes command similar prices.

5.12. The Commission further submitted that the market is potentially broader when it comes to industrial space. Thus it could be regional or national depending on the type of business and the economic viability of manufacturers.

5.13. In relation to retail space, the Commission submitted that the geographic market in retail properties is considered to vary depending on the type and size of the retail property.

5.14. Geographic location of the properties is significant in defining the market. There is no geographic overlap of the parties' properties. This is so because PIC's office properties and industrial properties are located in Johannesburg and Mmabatho (NW Province), while the target firm's properties are situated in Pretoria East Region. With regards to retail properties PIC's portfolio is in Mabopane (N.Pretoria), Mmabatho, Rustenburg and Mthatha, while target properties are situated in the Pretoria East Region.

5.15. Moreover, ACSA's properties are located around the various airports across South Africa.[8]None of ACSA's properties are located in Pretoria where the target firm's properties are located.

5.16. There is therefore no need to delineate the precise geographic markets since it is clear that on any reasonable delineation of these markets there will not be a significant overlap between the merging parties.

Effect on competition

6. The merging parties submitted market figures only for commercial office space based on the figures from the South African Property Owners

8 ACSA's property portfolio is situated at the following airports Johannesburg International Airport; Cape Town International Airport; Durban International Airport; Port Elizabeth Airport; East London Airport; George Airport; Bloemfontein Airport; Kimberly Airport; Upington Airport and the 35 year concession held by ACSA to manage the Pilanesburg International Airport.

Association ("SAPOA").[9] According to the parties, the estimated market share of the target firm is 0.23% of the national market, and the market share for the acquiring firm is 1.47%. The combined market share of the merging parties is therefore approximately 1.7%.

7. The parties estimated that the market share is even lower for the retail and industrial space.

8. The market shares are small and do not raise any serious competition concerns.

9. The market share of the ACSA properties have not been included in the parties' analysis of the market. In the PIC/ADRIASA case the parties thereto submitted that the nature of office, retail, industrial and other space provided at the airports controlled by ACSA is *sui generis* (not easily substitutable or interchangeable for other office, retail and other rentable space) and more specifically not interchangeable to the office, retail and other rentable space provided by PIC.[10] This argument is equally true in the present case. Even if ACSA's market share is considered the parties' market share post merger remains small and does not raise competition concerns.[11]

Public Interest

9.1.1. There are no public interest issues.

Conclusion

10. We conclude that the merger will not lead to a substantial lessening or prevention of competition. Nor are there public interest issues raised by this transaction. The merger was accordingly approved without conditions.

13 July 2006

D. Lewis **Date**

Concurring: N Manoim and M Mokuena

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9 See pages 35-37 of the record.

10 See page 454 of the PIC/ACSA record.

11 On pages 458-462 of the PIC/ADRIASA record where it surfaces that ACSA's market share in the broad market of office, retail and industrial space is less than 3% in the said categories.

For the merging parties:	M Phukubje and A. Asmal, PPM Attorneys
For the Commission :	Leonard Lamola, Mergers and Acquisitions