

The background of the entire page is a photograph of a city skyline at sunset, with a large, golden puzzle piece in the foreground. The puzzle piece is shaped like a large letter 'C' and is positioned on the right side of the page. The city skyline is visible through the puzzle piece and in the background. The sky is a mix of orange, yellow, and blue. The puzzle piece is made of a material that looks like wood or metal with a grainy texture.

T. CORPORATE & COMMERCIAL LAW

THE COMPETITION TRIBUNAL'S UNCONDITIONAL APPROVAL OF A LARGE MERGER.

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12 AUGUST 2026

A worthwhile read on the Competition Tribunal's unconditional approval of a large merger between the Government Employees Pension Fund, represented by the Public Investment Corporation SOC Ltd, and CG and Zinyana Africa Holdings (Pty) Ltd (LM159Dec25).

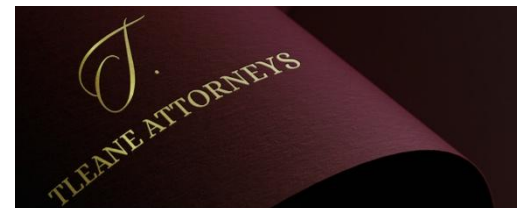
The Competition Tribunal's decision in Government Employees Pension Fund represented by the Public Investment Corporation SOC Ltd v CG and Zinyana Africa Holdings (Pty) Ltd (LM159Dec25) provides a useful and timely illustration of how a large merger is assessed under South African competition law.

At first glance, the decision to unconditionally approve the transaction appears straightforward. Yet, beneath that uncomplicated outcome lies a useful illustration of the three dimensions of merger control that parties must navigate. The three dimensions are the structure of the transaction, its effect on competition, and its broader public-interest implications.

On 9 February 2026, the Tribunal approved the large merger pursuant to which the Government Employees Pension Fund (“GEPF”), represented by the Public Investment Corporation SOC Ltd (“PIC”), would acquire 49% of the ordinary shares in CG and Zinyana Africa Holdings (Pty) Ltd (“CGZAH”), resulting in GEPF, represented by PIC, exercising joint control over CGZAH. The matter was heard on 6 February 2026 before Professor Imraan Valodia, the Presiding Member, with Adv. Geoff Budlender SC and Ms Andiswa Ndoni concurring. The Tribunal's reasons were issued on 23 February 2026.

The case is particularly interesting because the Commission and Tribunal had to look beyond the acquisition of shares itself. An internal restructuring of the Target Group formed part of the transaction, requiring an assessment of whether the various steps constituted a single indivisible transaction. The authorities then considered whether the transaction raised any competition concerns and whether it raised any public-interest concerns.

The result was an unconditional approval. The reasoning of the approval provides valuable insight into how South African merger control operates in practice.



The Transaction: Who Was Acquiring Whom?

The primary acquiring firm was the GEPF, represented by the PIC. The GEPF, PIC and firms controlled by the GEPF constituted the Acquiring Group for purposes of the merger assessment.

The Acquiring Group comprised of investment vehicles and underlying investments spanning numerous industries and sectors and taking various forms, including equity and other investment mechanisms.

The primary target firm was CGZAH, together with the firms it controlled, collectively referred to as the Target Group. The Target Group operates principally in the industrial and mining sectors and provides mechanical, electrical, instrumentation, welding and project management services. Its activities also include drone-based inspection and data-processing services.

Its subsidiaries include Prommac (Pty) Ltd (“Prommac”), New Age Engineering (Pty) Ltd (“New Age”) and Kumunyack (Pty) Ltd (“Kumunyack”).

Three Questions Before the Tribunal

At its core, the Tribunal had to consider three questions. First, Indivisibility: were the various steps forming part of the restructuring sufficiently connected to constitute a single, indivisible transaction for purposes of merger control? Second, Competition: was the transaction likely to substantially prevent or lessen competition in any relevant market? Third, Public Interest: did the transaction raise any concerns under the public-interest considerations set out in section 12A(3) of the Act?

These distinct questions demonstrate that merger control is not a single question exercise. A transaction may raise no conventional competition concerns but still require careful consideration of public-interest consequences. Similarly, the legal form of a transaction may not tell the full story when determining what the transaction actually comprises.



Glance at the Legal Framework

1. Indivisibility: Looking Beyond the Legal Form

The Commission's Guidelines on Indivisible Transactions recognise that multiple transactions may, in appropriate circumstances, be notified and assessed under a single merger filing. The Guidelines were issued in terms of section 79(1) of the Act and provide a framework for determining whether separate transaction steps should be treated as one transaction for merger-control purposes.

The inquiry is therefore not simply whether the transaction documents contain separate steps. The focus is on the substance and relationship between those steps.

Relevant considerations include the interdependence of the transactions, their commercial rationale, the relationship between the parties, ownership and control, and whether the various steps form part of a broader commercial arrangement.

The underlying question is essentially whether the transaction steps are sufficiently connected that they should properly be assessed together, rather than artificially separated into independent transactions.

2. Competition: Does the Transaction Change the Competitive Landscape?

Section 12A requires the Commission or Tribunal to determine whether a merger is likely to substantially prevent or lessen competition, taking into account the factors set out in section 12A(2). Those factors include matters such as the strength of competition in the relevant market, barriers to entry, concentration, countervailing power and other factors relevant to competition.

A useful starting point is to identify whether the merging parties have a horizontal or vertical relationship.

A horizontal overlap exists where the merging parties, or firms within their respective groups, operate at the same level of the supply chain and compete in the same relevant market. The concern is that a merger between competitors may remove an independent competitor, increase concentration or enhance the merged firm's market power.



A vertical overlap exists where the parties operate at different levels of the same value chain. The concern here is different. An assessment is done on whether the merged entity may potentially use its position at one level of the value chain to disadvantage competitors at another level, for example through input or customer foreclosure.

The distinction is therefore not merely technical. It assists the competition authorities in identifying the potential theory of harm arising from a transaction.

3. Public Interest: A Separate Merger-Control Inquiry

Public interest occupies a distinct position within South African merger control. Section 12A(1A) requires the Commission or Tribunal, despite its determination on the competition question, to determine whether the merger can or cannot be justified on substantial public-interest grounds by considering the factors in section 12A(3).

Those factors include the merger's effect on:

- a particular industrial sector or region;
- employment;
- the ability of small and medium-sized businesses, or firms owned or controlled by historically disadvantaged persons (hereinafter referred to as "HDPs"), to enter, participate in or expand within the market;
- the ability of national industries to compete in international markets; and
- the promotion of a greater spread of ownership, particularly increased ownership by HDPs and workers.

This distinction matters. A merger may be competitively benign and still require scrutiny from a public-interest perspective.

The ownership consideration is particularly important in the South African context. The current framework requires the authorities to consider the effect of a merger on the promotion of a greater spread of ownership, particularly ownership by HDPs and workers. The inquiry therefore extends beyond asking simply whether existing ownership will be diluted.



How the Commission Assessed the Transaction

Indivisibility: One Commercial Arrangement

The Target Group was to undergo an internal restructuring pursuant to which Prommac, New Age and Kumunyack, over which the Target Group exercised joint control, would come under the sole control of CGZAH. Following the restructuring, the three entities would be wholly owned by CGZAH.

The Commission considered the substance and commercial rationale of the restructuring and concluded that the various steps could not properly be viewed in isolation.

Three features were particularly important. First, the restructuring occurred among common shareholders. Second, CGZAH remained the ultimate controlling shareholder. Third, the restructuring was undertaken to facilitate GEPF's acquisition of a consolidated engineering services business.

The Commission therefore treated the various steps as a single indivisible transaction. The Tribunal agreed with that assessment.

This is an important practical point for transaction structuring. The legal documentation of a transaction into separate steps does not necessarily mean that those steps will be treated as separate transactions for competition purposes. Substance, interdependence and commercial purpose remain important.

Competition: No Horizontal or Vertical Overlap

The competition assessment was comparatively straightforward. The Commission found no horizontal overlap because the Acquiring Group did not control any firms operating in the same markets as the Target Group. The acquisition therefore did not bring together competing businesses within the same relevant market.

There was also no vertical overlap. The Acquiring Group did not control firms operating at different levels of the same value chain as the Target Group.

Consequently, the transaction did not create a vertical relationship capable of raising concerns such as input or customer foreclosure. The Commission found that the transaction would not



result in market-share accretion or structural changes in any market and concluded that it was unlikely to substantially prevent or lessen competition. The Tribunal agreed.

The case therefore provides a useful illustration of the importance of looking beyond the identity of the acquiring shareholder. The GEPF, through its investment portfolio, had exposure to numerous sectors. The relevant question was not whether GEPF had investments generally, but whether the Acquiring Group controlled firms that competed with or operated at another level of the value chain in relation to the Target Group.

Public Interest: Where the Case Becomes More Interesting

The public-interest assessment arguably provides the more interesting part of the decision.

Employment

The merging parties submitted that the transaction would not have adverse employment effects because it would not result in retrenchments.

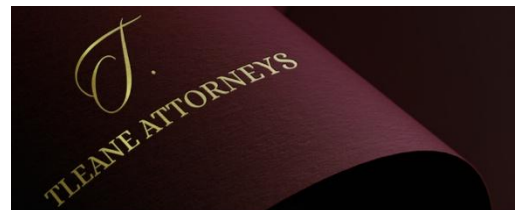
The Commission did not simply accept this submission at face value. It contacted employee representatives of both the Acquiring Group and Target Group. The employee representative of the Target Group confirmed that employees had raised no concerns, and no concerns were raised by employees of the Acquiring Group.

On that evidence, the Commission concluded that the transaction did not raise employment concerns. The Tribunal agreed.

The significance of this aspect of the decision lies in the evidence-driven nature of the assessment. The authorities were required to consider the effect of the transaction on employment, and the absence of retrenchments was supported by the absence of employee concerns.

Ownership: Preserving HDP Participation

Another notable aspect of the decision is the ownership assessment. CGZAH remained partly owned by HDPs following the transaction. The introduction of GEPF as a shareholder was not regarded as diminishing that existing HDP ownership. The Tribunal also noted that GEPF's beneficiaries include public-sector workers.



On those facts, the Tribunal concluded that the transaction did not negatively affect the promotion of a greater spread of ownership and that no further intervention was required. The Tribunal expressly regarded its conclusion as consistent with previous Tribunal precedent.

The significance of this merger is therefore more nuanced, particularly given the contrast it presents between the introduction of new ownership and the dilution of existing ownership. The transaction introduced a significant institutional investor without displacing the existing HDP ownership position in CGZAH. The Tribunal therefore did not regard the mere introduction of a new shareholder as determinative. Rather, it satisfied itself that the transaction did not, among other considerations, give rise to any further public interest concerns relating to regional impact, industrial development, or the participation of small or HDP-owned firms.

What Does this merger Tell Us?

Firstly, this decision tells us the legal principles for a merger can be distilled into three interconnected areas; indivisibility assessment, the competition assessment and the public-interest assessment.

Secondly, the importance of this merger lies less in the fact that the merger was approved and more in how the approval was reached.

The indivisibility assessment demonstrated that the substance of a transaction matters. The transaction structure cannot be considered in isolation from commercial reality.

Where several steps are interconnected, undertaken among common shareholders and directed towards a single commercial objective, the Commission may treat them as one transaction even where they are legally structured as separate steps.

For transaction parties, this means that merger-control analysis should begin early in the structuring process. The question is not merely, *“How have we documented the transaction?”* but also, *“What is the transaction in substance?”*

The competition assessment illustrates the importance of identifying how a transaction could alter the competitive landscape. This analysis requires a theory of potential competitive harm.



The absence of an overlap is therefore highly relevant, but it should not be mistaken for the statutory test itself where a requirement a broader assessment of the competitive effects of the merger.

Perhaps the most important lesson is that a competitively benign transaction is not necessarily the end of the inquiry. This case has demonstrated that public interest does not disappear when there are no competition concerns.

Authorities are still required to undertake the public-interest assessment independently of the competition determination. The fact that the Tribunal separately considered employment, ownership and the remaining public-interest grounds demonstrates that public interest is not merely an extension of the competition analysis.

The decision also illustrates a measured approach to merger conditions. In that public-interest intervention should be connected to an identified effect.

Where the evidence does not establish an adverse competitive or public-interest effect requiring intervention, there may be no basis for imposing conditions. In this case the absence of identified competition concerns, retrenchments, diminution of HDP ownership or other adverse public-interest effects resulted in unconditional approval.

The decision also provides a useful illustration of a principle of evidence-based intervention. Conditions should address an identified concern arising from the transaction rather than being imposed simply because a transaction has a public-interest dimension.

