

# Ban on Burger King deal over black ownership sparks fierce debate

**fin24**  
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A fierce debate has been ignited by the Competition Commission's decision to prohibit the Burger King SA takeover due to the buyer's lack of black shareholding.

Emerging Capital Partners (ECP) – an Africa-focused private equity firm founded in the US – was set to buy the local Burger King franchise (plus a food producer that supplies the chain with patties) from Grand Parade Investments.

But this week, the commission halted the sale on public interest grounds, namely that the shareholding of historically disadvantaged persons would drop from nearly 70% to zero.

Competition Commissioner Tembinkosi Bonakele told Parliament's portfolio committee on trade and industry the [watchdog had had "no choice"](#) but to block the transaction. He described the public interest issue as "glaring".

Wayne McCurrie, portfolio manager at FNB Wealth and Investments, believes the commission was well within its rights to block the sale, as mandated by the Competition Act.

"This private equity firm must either sort out its shareholder base to satisfy the Competition Commissioner or they must find another buyer who has the right shareholder base.

"If the commissioner is entitled to block something on this basis as per the Competition Act, then they are entitled to. That is the rules of how they operate," said McCurrie.

McCurrie added that regardless of a firm's country of origin, local laws still apply.

### **The law is the law**

"That's the law in SA. If you want to buy a South African company, you have to comply with the BEE rules and regulations. You can't just say I am a US company, and I don't have to comply with your local rules.

"You must comply," said McCurrie.

McCurrie further argued that the Competition Commission's role is bigger than just to oversee antitrust issues in the narrowest sense.

"As far as I know, their mandate is not just to make sure that competition isn't compromised.

"They have to watch out for jobs, and clearly, now they have to watch out for the shareholder base of the acquiring company in relation to the company that's selling," said McCurrie.

Bonakele echoed this, saying said the commission had to meet key transformation objectives.

But others have come out guns blazing, arguing that the commission has overstepped its mark.

One of the most vocal critics is Paul Whitburn, analyst and portfolio manager at Rozendal Partners, which holds a stake in Grand Parade Investments and has been pushing hard for change at the company.

### **Not its mandate**

He believes the commission is essentially making a call on BEE regulation, which is not its mandate.

"[Some] 99% of shareholders voted for the sale, including the 68% black shareholders. The vast majority of shareholders wanted to sell the asset," he said.

He added that the black shareholders have not received a dividend from the company – which is buckling under a massive debt burden – for years, and that the offer amount was "at full price".

"Essentially, [the commission is] causing these previously disadvantaged people not to be able to get full value for this asset."

Also, he said that the ECP and Grand Parade gave the commission a number of undertakings that would have addressed its concerns.

Among them was that within 24 months Burger King SA would have had an effective interest of 5% by "an appropriate B-BBEE ownership structure".

The company would also increase the number of permanent employees employed in South Africa by no less than 1 250 HDPs. Commitments were also made for investments and capital expenditure, and an increase in Burger King outlets and employment.

"They were going to address all these things. We're sitting in a country with 75% youth unemployment, they would've doubled the store base in SA and provided another 2 500 jobs," Whitburn said.

"It's got larger ramifications for assets in SA. We're on a big drive to try get international investors, what company in their right mind will want to invest here if they know they can't exit the country or sell assets at any point in the future because of this so-called public interest."

He added that the concerns also seemed to be a recent development, with president Cyril Ramaphosa, who held the majority stake in McDonald's South Africa, managing to sell his asset to a company in the UAE in 2017, without the same prohibition.

### **'Caught off-guard'**

Shareholder activist Theo Botha also sympathised with Grand Parade Investments, saying it had been a struggle to sell Burger King.

"The Competition Commission should be looking at what the market forces are in terms of how dominant is this new player in other sectors or the sector they are buying into," Botha argued.

"Surely, we have other regulatory bodies in terms of BEE that would regulate the BEE status of that company coming in.

Botha said it is the first time he has ever seen the Competition Commission look at black empowerment when considering the merits of a deal. "That's what caught the market off guard."

### **What is next for Grand Parade?**

"Surely in these times, it's also important that somebody wants to invest money into the country. So, what is Grand Parade going to do now?"

"They've struggled for a long time trying to sell this business, and kudos to them for getting a buyer. I think it's a sad day for South Africa and a sad day for black empowerment vehicles. Empowerment is not just about owning shares; it is also about realising your value," said Botha.

McCurrie said there is still recourse for the parties as they can go to the Competition Tribunal to appeal the decision.

Bonakele similarly noted that the Commission, as an implementing agent, interpreted the law and acted as such; it is up to the parties to challenge the Commission's interpretation of the law with the courts.

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