



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 019208**

In the matter between:

**GROWTHPOINT PROPERTIES LTD**

Primary Acquiring Firm(s)

And

**TRUZEN 75 TRUST AND  
ERVEN 99 AND 100 PARKTOWN TOWNSHIP SHAREBLOCK (PTY) LTD**

Primary Target Firm(s)

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Panel	:	Norman Manoim	(Presiding Member)
	:	Yasmin Carrim	(Tribunal Member)
	:	Imraan Valodia	(Tribunal Member)
Heard on	:	20 August 2014	
Order Issued on	:	20 August 2014	
Reasons Issued on	:	29 August 2014	

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### Reasons for Decision

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#### Approval

- [1] On 20 August 2014 the Competition Tribunal ("Tribunal") unconditionally approved an acquisition by Growthpoint Properties Limited of a 50% interest in the Truzen 75 Trust and 50% of the shares in Erven 99 and 100 Parktown Township Share Block (Pty) Ltd.
- [2] The reasons for unconditionally approving the proposed transaction follow hereunder.

## Parties to the Transaction

### *Primary acquiring firm*

- [3] The primary acquiring firm is Growthpoint Properties Limited ("Growthpoint"). Growthpoint is a property investment holding company and is listed as a real estate investment trust (REIT) on the Johannesburg Securities Exchange with its shares widely dispersed.<sup>1</sup> Growthpoint's property portfolio comprises rentable office, retail and industrial space situated throughout South Africa.

### *Primary target firm*

- [4] The primary target firm is the remaining 50% (i.e. the 50% Growthpoint does not own pre-merger) in a property portfolio held by the beneficiaries of the Truzen 75 Trust ("Truzen Trust") and the shareholders of Erven 99 and 100 Parktown Township Share Block (Pty) Ltd ("Parktown Share Block") (collectively "the Target Properties"). The Target Properties are essentially rentable office space situated in Parktown, Johannesburg.

## Proposed Transaction

- [5] Earlier this year, the Tribunal unconditionally approved a merger in terms of which Growthpoint acquired, *inter alia*, 50% of the interests in the Truzen Trust and 50% of the share capital of the Parktown Share Block<sup>2</sup> ("The Previous Transaction") The transaction before us now is essentially a follow-on transaction in terms of which Growthpoint seeks to increase its 50% holding to 100%.
- [6] The proposed transaction is structured as two indivisible and interdependent Sale Agreements; the first between Growthpoint and the beneficiaries of the Truzen Trust and the second between Growthpoint and the shareholders of the Parktown Share Block.

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<sup>1</sup> There is just one shareholder in Growthpoint holding more than 5% of the issued shares, the Government Employees Pension Fund (GEPPF)

<sup>2</sup> This was in terms of Case No 018143.

## Rationale

- [7] Growthpoint submits that the acquisition is in line with its strategy of *"making dividend enhancing acquisitions and provides Growthpoint with a strategic interest in and direct exposure to the Target Companies' retail and office portfolios."*
- [8] The target firms submit that the disposal is in line with their strategy of making long term investments and selling them at a profit for use in future endeavours.

## Relevant Market and Competition Analysis

- [9] Both the merging parties and the Competition Commission ("Commission") identified an overlap in the market for the provision of rentable A-grade office space in the Parktown node and thus considered the effect of the transaction on that market.
- [10] The merging parties submit that the transaction causes their market share to increase from around 18% to 24%. This submission is in fact incorrect since Growthpoint is considered to control the target firms pre-merger and there is thus no accretion in the true sense.
- [11] The Commission submits that the merged entity will enjoy a market share in the region of 28.5% but remains unconcerned due to the fact that Growthpoint is considered to control the Target Properties pre-merger in terms of its shareholding<sup>3</sup> and submits that the competitive landscape and Growthpoint's position have remained largely unchanged as a result of this transaction.
- [12] With Growthpoint exercising control pre-merger, the question to be asked then is whether Growthpoint's incentive, due to the change in the nature of its

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<sup>3</sup> The aforementioned previous transaction (Case No. 018413) was assessed on the basis of Growthpoint exercising control over the Target Firms.

control, is likely to be altered by the merger. The Commission's investigation revealed that Growthpoint already exercised management control pre-merger and that this includes, but is not limited to, the preparation and implementation of marketing strategies, the sourcing of and negotiating with tenants, and the conclusion of lease agreements. The Commission thus concluded, a finding with which we concur, that the shift to sole control is unlikely to alter Growthpoint's incentives whatsoever.

### **Public Interest**

[13] The proposed transaction has no effect on employment or any other public interest consideration and thus demand no further consideration.

### **Conclusion**

[14] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. Accordingly, we approve the transaction unconditionally.



**MS YASMIN CARRIM**

29 August 2014

**DATE**

**Mr Norman Manoim and Prof Imraan Valodia concurring**

Tribunal Researcher: Shannon Quinn

For the merging parties: Johan Coetzee of Glyn Marais Inc.

For the Commission: Dineo Mashego