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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020420

In the matter between:

GROWTHPOINT PROPERTIES LIMITED	Primary Acquiring Firm
And	
ACUCAP PROPERTIES LIMITED	Primary Target Firm

Panel	: Mr A Wessels (Presiding Member)
	: Prof. I Valodia (Tribunal Member)
	: Ms M Mokuena (Tribunal Member)
Heard on	: 11 March 2015
Order Issued on	: 11 March 2015
Reasons Issued on	: 23 March 2015

Reasons for Decision

Approval

[1] On 11 March 2015, the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Growthpoint Properties Limited ("Growthpoint") of Acucap Properties Limited ("Acucap").

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

Parties to proposed transaction

[3] The primary acquiring firm is Growthpoint. No one firm controls Growthpoint for competition law purposes. Growthpoint is listed as a Real Estate Investment Trust on the Johannesburg Securities Exchange Limited. Growthpoint has a number of subsidiaries.[1]

[4] Growthpoint is a property investment holding company. Its property portfolio comprises of rentable retail space, rentable office space and rentable industrial space. The majority of Growthpoint's properties are situated in Gauteng with the remainder located in the Western Cape, KwaZulu-Natal and the Eastern Cape.

[5] The primary target firm is Acucap. The shares of Acucap are listed on the Johannesburg Securities Exchange. Acucap directly and indirectly controls a number of firms.[2]

[6] Acucap is a property loan stock company. It invests in retail property situated in major urban centres and retains the characteristic of a diversified fund through investments in quality office nodes and industrial parks.

Proposed transaction and rationale

[7] Growthpoint intends to acquire all the ordinary shares in the issued share capital in Acucap not already held by it. Post-merger Acucap will become a wholly-owned subsidiary of Growthpoint.

[8] Growthpoint submitted that the proposed transaction presents *inter alia* an opportunity to increase the size of its property portfolio, increased retail weighting of the fund and the take-on of an experienced asset management team.

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[1] See merger record, pages 12 to 14.
[2] See merger record, pages 57 to 59.

[9] Acucap submitted that the proposed transaction will provide *inter alia* a greater spread of assets and a more diversified sectoral spread.

Relevant markets and impact on competition

[10] The Competition Commission ("Commission") identified product overlaps between the merging parties' activities in the following areas:

(i) Grade A office property in the Bedfordview/Bruma node;

(ii) Grade A office property in the Bellville node;

(iii) Grade A office property in the Bryanston/Epsom Downs node;

(iv) Grade A office property in the Illovo node;

(v) Grade A office property in the Menlyn/Faerie Glen/Ashlea Gardens node;

(vi) Grade A office property in the Pinelands node;

(vii) Grade A office property in the Rondebosch/Newlands node;

(viii) Grade A[3] office property in the Sandton and Environs node;

(ix) Grade A and P[4] office property in the Sandton and Environs node;

(x) Grade B office property in the Green Acres node;

(xi) rentable comparative centres within a 15 km radius of the Green Acres Mall[5];

(xii) rentable value centres within a 10 km radius of the East Rand Value Centre[6];

(xiii) Grade A[7] office property in the Cape Town CBD node;

(xiv) Grade A and P[8] office property in the Cape Town CBD node; and

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[3] The Commission left the product market delineation open with regards to the property grade, i.e. whether or not Grade A and Grade P office property constitute a single or separate relevant product markets.

[4] The Commission left the product market delineation open with regards to the property grade, i.e. whether or not Grade A and Grade P office property constitute a single or separate relevant product markets.

[5] Acucap currently owns this centre.

[6] Acucap currently owns this centre.

[7] The Commission left the product market delineation open with regards to the property grade, i.e. whether or not Grade A and Grade P office property constitute a single or separate relevant product markets.

(xv) Grade A office property in the Woodmead node.

[11] We take no view in these reasons on whether Grade A and Grade P office property in any of the above-mentioned nodes constitute a single or separate relevant product markets.

[12] The Commission concluded that the merged entity's post-merger market share will be less than 30% in markets (i) to (xii) above. The Commission was of the view that competitors' properties in these markets will serve as credible alternatives to the tenants of the merging parties should the merging firms attempt to unilaterally increase their prices to the detriment of their tenants. The Commission therefore concluded that the proposed merger is unlikely to substantially prevent or lessen competition in these markets. We concur with the Commission's conclusion and do not deal with these markets in any further detail.

[13] In the markets for the provision of rentable (i) Grade A and (ii) grade A and P office property in the Cape Town CBD node the merged entity will have post-merger market shares of [30-40]%. The Commission was however of the view that the merged entity would still be unlikely to exercise power market in these markets given (i) the presence of certain competitors in this node; (ii) several new office developments in this node that will likely increase the amount of office space available for rental; and (iii) current vacancy rates of 10% for Grade A office property in this node and 36.5% for Grade P office property in this node.[9] The Commission concluded that these factors will sufficiently dilute the merged entity's market share and constrain the merged entity in future.

[14] The Tribunal questioned the merging parties regarding the above-mentioned new property developments since the merging parties' competitive report and the Commission's report only contained the names of the planned

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[8] The Commission left the product market delineation open with regards to the property grade, i.e. whether or not Grade A and Grade P office property constitute a single or separate relevant product markets.

[9] Source: the South African Property Owners Association (SAPOA).

developments and the overall volume (i.e. the Gross Leasable Area (GLA)) of the planned space. The Tribunal was specifically interested in the identities of the parties responsible for these developments, the grade(s) of office property being developed and the likely future occupation dates of the office space. The Tribunal will require merging parties to submit full details in future merger filings regarding new property developments for the Commission to investigate further where market shares in a relevant market are significant.

[15] Similarly, in the market(s) for (i) Grade A and (ii) Grade A and P office property in the Woodmead node the merged entity will have high post-merger market shares of [40-50]%. The Commission was however of the view that the merged entity would be unlikely to exercise market power in these markets given (i) the presence of the existing Grade A offices owned by competitors such as Redefine, Zenprop, Emira and Tower Property Fund; (ii) a current vacancy rate in this node of 9.1%;[10] and (iii) adjacent nodes within a 5 km radius from the Woodmead node. These adjacent nodes include Waterfall, Sunninghill and Morningside. The Commission indicated that in particular the new developments in the Waterfall node will likely add more than 200 000 m2 of rentable office property to the area. Based on this the Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in these relevant markets.

[16] None of the merging parties' tenants contacted by the Commission raised any competitive concerns arising from the proposed transaction.

[17] We have no reason to doubt the Commission's conclusion on the competition effects of the proposed merger with regards to the latter relevant markets.

Public interest

[18] The merging parties confirmed that the proposed transaction will not have any negative effect on employment in South Africa and that no retrenchments will result from the proposed transaction.[11]

[10] Source: the South African Property Owners Association (SAPOA).
[11] Merger record, pages 6, 95 and 144.

[19] The proposed merger further raises no other public interest concerns.

Conclusion

[20] 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.

Mr A Wessels — 23 March 2015 **DATE**

Prof. I Valodia and Ms M Mokuena concurring

Tribunal Researcher:	Moleboheng Moleko
For the merging parties:	Johan Coetzee of Glyn Marais Inc
	Vani Chetty of Baker & McKenzie
For the Commission:	Seabelo Molefe