

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case no: 107/LM/Nov05**

In The Large Merger Between:

**The Trustees for the Time Being of the CBS Property Trust**

**Acquiring Firm**

And

**Growthpoint Properties Ltd**

**Target Firm**

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**Reasons for Decision**

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**Approval**

1. On 22 December 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between The Trustees for the time being of the CBS Property Trust and Growthpoint Properties Ltd. The reasons for this decision follow.

**The Transaction**

2. The primary acquiring firm is The Trustees for the time being of the CBS Property Trust ("CBS Property"), which is controlled by CBS Property Portfolio Limited ("CBS"), an unlisted property company. The primary target firm is Growthpoint Properties Limited, a variable rate property loan stock company listed on the Real Estate sector of the JSE Securities Exchange South Africa ("JSE").<sup>1</sup>
3. In terms of the transaction, CBS Property will acquire from Growthpoint, a portfolio of nine immovable properties and all right, title and interest in and to lease agreements in respect of the premises forming part of that portfolio from Growthpoint.<sup>2</sup>
4. According to the parties, CBS Property is in the process of acquiring a portfolio of properties for the purposes of listing on the Real Estate sector of the JSE. From Growthpoint's perspective, the target properties are older and of lower quality compared to the overall Growthpoint property portfolio. The parties submit that the current state of the property market makes it possible to dispose of properties that no longer meet Growthpoint's investment criteria at relatively attractive prices.<sup>3</sup>

**The Merging parties' activities**

5. CBS Property currently does not have any property portfolio. Both Growthpoint and CBS own property and derive income from rentals received from the tenants in the properties

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<sup>1</sup> A list of firms which hold more than 5% of the issued capital of Growthpoint can be found on page 10 of the Merger Record.

<sup>2</sup> A list of the properties can be found on page 2 of the Commission's Report.

<sup>3</sup> See pages 187-188 of the Merger record.

they own. CBS owns property located in the Western Cape and Gauteng. Growthpoint owns 120 properties located throughout South Africa.

6. Growthpoint also derives income from investments through its shareholding in Centrecity Property Fund Limited and Metboard Properties Limited. The parties submit that none of Growthpoint's interests in these companies confer on it the ability to materially influence the policies of these companies.

### **Impact on Competition**

7. An examination of the property portfolio's of CBS and Growthpoint reveals the following:
  8.
    - 8.1. Where CBS and Growthpoint compete in the same class of property, <sup>4</sup> there is no geographic overlap in their activities,<sup>5</sup> and
    - 8.2. Where CBS and Growthpoint are active in the same geographic nodes, the class of property differs.<sup>6</sup>
9. Based on the information provided to us by the merging parties and the Commission, we are satisfied that the transaction does not raise any significant competition concerns. There are no public interest issues, which would alter our view. The transaction is approved unconditionally.

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**8 March 2006**  
Date

Concurring: L Reyburn and M Mokuena

For the merging parties: Advocate O Mooki instructed by Jowell Glyn & Marais.

For the Commission: T Kekana and M Matsimela (Mergers and Acquisitions)

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<sup>4</sup> The delineation of the various classes of property as well as the various relevant geographic nodes have been dealt with in a number of large mergers before the Tribunal.

<sup>5</sup> Growthpoint's commercial properties are located in Gauteng and Kwa-Zulu Natal and CBS's in the Western Cape. Growthpoint's industrial properties are located in Gauteng and North-West, while CBS's are located in the Western Cape.

<sup>6</sup> Confirmed by Counsel for the merging parties during the hearing – at page 11 of the transcript.