

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM005Apr22

In the matter between:

Growthpoint Healthcare Property Holdings Ltd and
Bidvest Properties (Pty) Ltd

Primary Acquiring Firms

And

Growthpoint Securitisation Warehouse Trust

Primary Target Firm

Panel: I Valodia (Presiding Member)
A Ndoni (Tribunal Panel Member)
F Tregenna (Tribunal Panel Member)

Heard on: 15 June 2022
Order Issued on: 15 June 2022

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Signed by: Imraan Valodia
Signed at: 2022-06-15 10:56:25 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

Presiding Member
Professor Imraan Valodia

15 June 2022

Date

Concurring: Ms Andiswa Ndoni and Professor Fiona Tregenna

COMPETITION TRIBUNAL OF SOUTH AFRICA

Merger Clearance Certificate

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Date: 15 June 2022

To: Adams & Adams Attorneys

Case Number: LM005Apr22

Growthpoint Healthcare Property Holdings (Pty) Ltd and Bidvest Properties And Growthpoint Securitisation Warehouse Trust

You applied to the Competition Commission on **12 April 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

Signed by: Sibongile Moshoeshoe

Signed at: 2022-06-15 12:54:21 +02:00

Reason: Witnessing Sibongile Moshoeshoe

The registrar, Competition Tribunal

Sibongile Moshoeshoe

ANNEXURE “A”

GROWTHPOINT HEALTHCARE PROPERTY HOLDINGS (RF) LTD

and

BIDVEST PROPERTIES (PTY) LTD

AND

**GROWTHPOINT SECURITISATION WAREHOUSE TRUST – TARGET PROPERTY: ADCOCK
INGRAM MIDRAND**

Case Number: LM005Apr22

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

- 1.1. **“Acquiring Firms”** means Bidvest Properties and GHPH;
- 1.2. **“Act”** means the Competition Act, 89 of 1998, as amended;
- 1.3. **“Approval Date”** means the date referred to on the Tribunal’s Merger Clearance Certificate (Form CT 10);
- 1.4. **“Bidvest Group”** means Bidvest Group Ltd and all firms it controls;
- 1.5. **“Bidvest Properties”** means Bidvest Properties (Pty) Ltd;
- 1.6. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.7. **“Commission Rules”** mean the Rules for the Conduct of Proceedings in the Commission;
- 1.8. **“Competitively Sensitive Information”** means information that is not in the public domain which is specific or precise and which is or may reasonably be expected to be commercially sensitive from a competition perspective in that it relates to any of: current or future pricing information; business plans or strategies; customer information

including plans for approaching customers or bidding for customer contracts; and marketing policies, plans, studies and forecasts;

- 1.9. **“Condition”** means these conditions;
- 1.10. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.11. **“Day”** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.12. **“GHPH”** means Growthpoint Healthcare Property Holdings (RF) Ltd;
- 1.13. **“Growthpoint Group”** means Growthpoint Properties Ltd and all firms it controls;
- 1.14. **“Growthpoint Management Services”** means Growthpoint Management Services (Pty) Ltd with registration number 2004/018933/07, including its successors-in-title;
- 1.15. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.16. **“Merger”** means the acquisition of control by the Acquiring Firms over the Target Property;
- 1.17. **“Merging Parties”** means collectively the Acquiring Firms and the Target Property;
- 1.18. **“Target Property”** means the property situated at 1 New Road, Erand Gardens, Midrand commonly known as Adcock Ingram Midrand;
- 1.19. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act; and
- 1.20. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1. Confidentiality and Information Exchange

2.1.1. The Merging Parties will enter into a confidentiality and information exchange agreement with regard to their joint control over the Target Property to the effect that:

2.1.1.1. Competitively Sensitive Information exchanged between the representatives of the Merging Parties will be limited to information relating to the Target Property; and

2.1.1.2. representatives of the Merging Parties will not exchange and/or provide one another with any Competitively Sensitive Information in relation to any other properties held within either the Bidvest Group and/or Growthpoint Group.

(“the Confidentiality Agreement”).

2.1.2. The Merging Parties’ representatives will sign undertakings that they will at all times adhere to the Confidentiality Agreement.

2.1.3. The Merging Parties will each develop and implement a confidentiality and information exchange policy (“**Confidentiality Policy**”).

2.1.4. The confidentiality and information exchange conditions above will endure for as long as Bidvest Properties and the Growthpoint Group remain joint shareholders of the Target Property.

2.2. **Property Management Agreement**

2.2.1. The Merging Parties will enter into a property management agreement with Growthpoint Management Services, the terms of which will be non-exclusive.

2.2.2. For the sake of clarity, any successive property management agreement that the Merging Parties may enter into with any other property management service provider shall not be exclusive in any form.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merging Parties shall inform the Commission of the Implementation Date within five Days of it becoming effective.
- 3.2. The Merging Parties shall, within three months of the Approval Date, develop and submit a Confidentiality Agreement and Confidentiality Policy to the Commission for comments and approval by the Commission within 60 Days of receipt.
- 3.3. The Merging Parties shall submit the final and signed property management agreement to the Commission, within 10 (ten) Days of the Approval Date.

4. APPARENT BREACH

- 4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

5. VARIATION

- 5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

6. GENERAL

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.