

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case no: LM081AUG24**

In the large merger between:

**Growthpoint Student Accommodation Holdings  
(RF) Limited**

Primary Acquiring Firm

And

**The Fountains View Development (“Target  
property”) C/O Growthpoint Properties Limited**

Primary Target Firm

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Panel:	I Valodia (Presiding Member) A Ndoni (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	09 October 2024
Order issued on:	09 October 2024
Reasons Issued on:	14 October 2024

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### REASONS FOR DECISION

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#### Introduction

- [1] On 09 October 2024, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger whereby Growthpoint Student Accommodation Holdings (RF) Limited (“GSAH”) intends to acquire 100% interest in the target property and letting enterprise known as The Fountain View Development property situated at 606 Thabo Sehume Street, Pretoria Central, known as “Fountain Views Development” (“Target Property”).<sup>1</sup>
- [2] Upon conclusion of the proposed merger, GSAH will exercise sole control over the Target Property.

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<sup>1</sup> See the Competitiveness Report submitted by the merging parties in the Merger Record at para 1.1, page 71.

## **Parties to the transaction and their activities**

### *Primary acquiring firm*

- [3] GSAH is ultimately controlled by Growthpoint Properties Limited (“Growthpoint”), a Real Estate Investment Trust (“REIT”) listed on the Johannesburg Stock Exchange (“JSE”).
- [4] GSAH, Growthpoint all the firms controlling it, and all firms controlled by these firms are hereinafter referred to as the “Acquiring Group”.
- [5] The Acquiring Group’s business activities includes investing in a diversified portfolio of commercial, industrial and retail assets in South Africa and internationally. Relevant to the proposed merger, the Acquiring Group also has activities related to student accommodation properties in Pretoria, Gauteng.

### *Primary target firm*

- [6] The Target Property comprises of immovable property as well as the letting enterprise carried out thereon. The immovable property is owned by Growthpoint, with the letting enterprise jointly controlled by Growthpoint and CBD Residency 3 (Pty) Ltd (“CBD Residency”) through a joint venture.
- [7] The Target Property comprises of 896 beds and provides housing to students in the Pretoria CBD area, with a focus on students of UNISA, Sefako Makgatho Health Sciences University, Tshwane University of Technology (“TUT”), the University of Pretoria (“UP”) and Rosebank College.

## **Description of the transaction and rationale**

- [8] In terms of the proposed merger, GSAH intends to acquire a 100% interest in the Target Property.
- [9] As GSAH is ultimately controlled by Growthpoint, the proposed merger will result in Growthpoint, through GSAH, acquiring sole control over the Target Property, whereas it currently has joint control. Upon implementation of the proposed merger, GSAH will exercise sole control of the Target Property.

[10] In relation to the rationale, the merging parties submit that the rationale for the proposed transaction is based on the fact that Growthpoint entered into an agreement with CBD Residency, in terms of which Growthpoint and CBD Residency would jointly develop the letting enterprise on the Target Property. Once development of the Target Property was completed, the Target Property would be transferred to GSAH.

### **Competition assessment**

[11] The Competition Commission ("Commission") considered the activities of the merging parties and concluded that the proposed merger results in a horizontal overlap in the market for the provision of private student accommodation since the merging parties are both active in this market.

[12] As regards the product market, the Commission relied on the matters between *Redefine (Pty) Ltd and Respublica Student Living (Pty)*<sup>2</sup> and *Growthpoint Student Accommodation Holdings (RF) Ltd and Feenstra Group Developments (Pty) Ltd in respect of the immovable property and letting enterprise known as Brooklyn Studios*<sup>3</sup> to define the product market as the market for private student accommodation excluding tertiary institution (internal) residences.

[13] The Tribunal queried the reason why the Commission excluded tertiary institution (internal) residences from its market definition in the proposed merger. In this regard, the Commission relied on the matter between *Masimo Ventures (Pty) Ltd and Mr Conrad Dana Kgwadi and CBD Residency 2 (Pty) Ltd and CBD Residency (Pty) Ltd*<sup>4</sup> wherein the Commission assessed the transaction in the market for the provision of residential property used for student accommodation, excluding tertiary institution (internal) residences.

[14] We leave the exact extent of the product market open as it does not alter our conclusion on the competition effects in the proposed merger.

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<sup>2</sup> Tribunal Case No. LM087Jul15.

<sup>3</sup> Tribunal Case No. LM174Jan23.

<sup>4</sup> Tribunal Case No. LM033May24.

[15] In relation to the geographic market, the Commission relied on the matter between *Futuregrowth Asset Management Proprietary Limited (acting as agent for Old Mutual Assurance Company (South Africa) Ltd) and Citiq Treasury (Pty) Ltd and Citiq Property Services (Pty) Ltd*<sup>5</sup> to define the geographic market as a radius of eight kilometres (kms) from the Target Property.

[16] The Commission found that the merged entity would have a combined market share of [REDACTED] with an accretion of [REDACTED] in the market for the provision of private student accommodation, excluding tertiary institution (internal) residences, within an eight km radius of the Target Property.<sup>6</sup>

[17] The Commission further finds that that there are other private student accommodation properties<sup>7</sup> within an eight km radius of the Target Property. Furthermore, there are other student accommodation properties within an eight km radius which are not accredited by universities or colleges, and not accounted for in the Commission's market shares analysis, such as AJO Building (728 beds), Minnaar Building (180 beds), Foundation Building (775 beds), Celliers Building (191 beds), Boikhutsong Building (357 beds) and Riverside Building (1260 beds).

[18] The proposed merger does not give rise to any vertical concerns.

[19] Based on the above, we are of the view that the proposed merger is unlikely to result in the substantial prevention or lessening of competition in any relevant market.

## **Public interest**

### *Employment*

[20] The merging parties submit that there will be no job losses as a result of the proposed merger.<sup>8</sup>

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<sup>5</sup> Tribunal Case No. LM097Jun18.

<sup>6</sup> See the Commission's Recommendation at para 28, page 14.

<sup>7</sup> Such as such as the University of Pretoria ("UP") private accredited accommodation, Tshwane University of Technology ("TUT") accredited private accommodation and Rosebank College private accredited accommodation. See the Commission's Recommendation at para 29, page 15.

<sup>8</sup> See the Competitiveness Report submitted by the merging parties in the Merger Record at para 9.1, page 88.

[21] The property management functions of the Target Properties are currently performed by Varsity Stay (Pty) Ltd (“Varsity Stay”).<sup>9</sup> Post-merger, the Target Property will continue to be managed by Varsity Stay.

[22] The employees of the Acquiring Group, CBD Residency, Growthpoint and the Target Property were duly notified of the proposed merger and did not raise any employment related concerns.<sup>10</sup>

[23] We are of the view that the proposed merger is unlikely to have a negative impact on employment.

#### *Promotion of a greater spread of ownership*

[24] GSAH, through its shareholders, has a shareholding by historically disadvantaged persons (“HDPs”) of [REDACTED], whereas the Target Property has a shareholding by HDPs of [REDACTED]. On this basis, the Commission found that the proposed merger results in an increase in HDP shareholding in the Target Property of approximately [REDACTED] and therefore in a greater spread of ownership.

[25] We are of the view that the proposed merger raises no substantial issues regarding the promotion of a greater spread of ownership.

#### **Conclusion**

[26] For the reasons set out above, we are satisfied that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market and the proposed merger does not raise public interest concerns.

[27] In the circumstances, we unconditionally approve the proposed merger.

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<sup>9</sup> The Feenstra Group has a non-controlling interest of [REDACTED] in the Acquiring Firm (GSAH) and the Feenstra Group’s wholly owned subsidiary, Varsity Stay (Pty) Ltd provides property management services in respect of the Target Property (which will continue following implementation of the proposed transaction) as well as other properties held by the Acquiring Firm. See the Schedules to Form CC4(2) of the acquiring firm at para 3.

<sup>10</sup> See the Commission Recommendation at para 29, page 15.

*Imraan Valodia*

**14 October 2024**

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**Prof. Imraan Valodia**

**Date**

**Ms Andiswa Ndoni and Adv Geoff Budlender SC concurring**

Tribunal Case Manager:	Tarryn Sampson
For the Merging Parties:	Misha van Niekerk of Adams & Adams
For the Commission:	Tumiso Loate and Grashum Mutizwa