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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 018143

In the matter between

Growthpoint Properties Ltd	Acquiring Firm
And	
Tiber Property Group (Pty) Ltd	Target Firm

Panel	:	Takalani Madima (Presiding Member) Andreas Wessels (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	30 January 2014
Order issued on	:	30 January 2014
Reasons issued on	:	05 March 2014

Decision

Approval

[1] On 30 January 2014, the Competition Tribunal (the "Tribunal") unconditionally approved the acquisition by Growthpoint Properties Ltd ("Growthpoint") of Tiber Property Group ("Tiber Property").

[2] The reasons for approving the proposed transaction are as follows.

Parties to transaction

[3] The primary acquiring firm is Growthpoint. Growthpoint is a property investment holding company which is listed as a Real Estate Investment Trust on the Johannesburg Securities Exchange. The following entities are Growthpoint's largest shareholders that hold in excess of 5% of its shares as at 31 August 2013: Government Employee Pension Fund (21.44%), Stanlib Property Income Fund (6%) and BEE Consortium (5.40%). Growthpoint wholly-owns a number of subsidiaries.[1] Growthpoint's property portfolio consists of rentable retail space, rentable office space and rentable industrial space. Relevant to this transaction are the rentable office and retail properties owned by Growthpoint in Johannesburg.

[4] The primary target firms comprise of a portfolio of properties belonging to Tiber Property, Tiber Developments (Pty) Ltd ("Tiber Developments") and the properties co-owned by Tiber Developments and other shareholders. Tiber Property and Tiber Developments are private companies incorporated in accordance with the laws of the Republic of South Africa and belong to a group of companies called the Tiber Group and are managed by Tiber Projects (Pty) Ltd ("Tiber Projects").

[5] The shareholders that own more than 5% shares in Tiber Property are: Finacom Holdings SA, Mulriv Holdings (Pty) Ltd, Francesco Rivera Investment Holdings (Pty) Ltd and Binandy Investments (Pty) Ltd. The shareholders that own more that 5% shares in Tiber Developments are: Francesco Rivera Investment Holdings (Pty) Ltd, Owls Barn Trust, Estate F Rivera, A Rivera and Germano Cardosso Family Trust.

[6] The property portfolio belonging to Tiber Property and its subsidiaries are rentable Grade A, B, P office properties as well as retail properties in Johannesburg.

[1] Refer to pages 1782 and 1783 of the record for a list of Growthpoint's subsidiaries.

Proposed transaction and rationale

[7] The proposed transaction comprises of a number of acquisitions by Growthpoint that have been notified by the merging parties as a single, indivisible and interdependent transaction. These acquisitions are: (i) the entire issued share capital of Tiber Property, (ii) 50% of the issued shares in and claims against each stand 1135 Houghton (Pty) Ltd, (iii) the Tiber Group's interest in the property letting enterprise conducted by Tiber Developments jointly with Momentum Property Investments (Pty) Ltd, (iv) the business of Tiber Projects as a going concern, (v) subscription of shares in Down House Investments (Pty) Ltd and (vi) the conclusion of a contractual relationship between Growthpoint and Brass Peak Trading (Pty) Ltd ("Devco").

[8] Growthpoint submitted that it wished to expand its property portfolio and gain access to development pipeline to further add to its property investment portfolio.

[9] According to Tiber Group, the board of directors of each entity in the group have been mandated to negotiate the disposal of the property portfolio in order to create liquidity for the shareholders and to maximise shareholder value.

Relevant market and impact on competition

[10] The Commission identified a horizontal overlap between the activities of the merging parties in respect of the market for rentable Grade A, B and P office properties as well as rentable retail properties.

[11] In respect of office properties, the properties of the merging parties overlap as follows:

- Grade A offices – in the Bryanston, Illovo, Killarney/Houghton, Parktown and Sandton and Environs nodes;
- Grade B offices – in the Rivonia, Rosebank, Sunninghill and Sandton and Environs nodes and
- Grade P offices – in the Sandton and Environs nodes.

[12] The Commission found that the merging parties' highest post-merger market shares will be as follows: Killarney/Houghton node (22%), Parktown node (28.50%) and the Sandton and Environs node (27%). In the remaining nodes the post-merger market shares are between 3% to 20%. The Commission contacted several customers and competitors of the merging parties in order to get their views regarding the proposed transaction.

[13] The Commission was informed by customers of the merging parties that they have some degree of countervailing power (rental prices are negotiated upfront and customers usually know how much rentals they are going to pay over the duration of their lease). These customers further indicated that there are other alternative office properties they can switch to and that there has been an increase in property development in prime areas such as Sandton and Rosebank. Only one customer of the parties raised concerns, namely, Transnet. Transnet occupies grade A offices belonging to Tiber Group in Parktown. Transnet submitted that in terms lease agreement, it has a right of first refusal on the sale of these properties.

[14] Transnet's concern is that the parties were supposed to be selling the properties to it but this has not occurred. In response, the merging parties indicated that Transnet's option to purchase the properties becomes relevant only upon expiration of the initial lease period and the initial period has not expired. The merging parties further indicated that the proposed transaction constitutes a sale of shares and the properties in question are not sold, which means that the provisions dealing with this issue in the lease agreement will not apply. None of the competitors of the merging parties contacted by the Commission raised concerns.

[15] In respect of retail properties, Growthpoint owns Blackheath shopping centre and Tiber Group owns Grayston Shopping Centre (both properties are in Sandton). Although these two shopping centres are both classified as convenience centres, the Commission found that there is no geographic overlap in respect of the properties as they are 14km away from each other. However, regardless of the exact product market delineation, we find that the proposed transaction will not substantially prevent or lessen competition in this market in

the affected geographic area as there are other firms who compete with the merging parties. Growthpoint also owns Woodmead Retail Park which is classified as a regional shopping centre and Tiber Group owns Rivonia Crossing 1 and 2 which are classified as value centres (both properties are situated in Rivonia). The Commission found that there is no overlap with these properties as they are classified differently.

Conclusion

[16] I conclude that that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant market.

Public interest

[17] The merging parties confirmed that the proposed transaction will have no adverse effect on employment and that it will not result in any retrenchments. Furthermore, the proposed merger raises no other public interest concerns.

CONCLUSION

[18] I therefore approve the merger unconditionally.

Dr. Takalani Madima

05 March 2014
DATE

Mr. Andreas Wessels and Mrs. Medi Mokuena concurring

Tribunal Researcher	: Ipeleng Selaledi
For the acquiring firm	: Johan Coetzee of Glynn Marais
For the target firms	: Paul Truter of Roodt Inc
For the Commission	: Rakgole Mokolo