

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 18/LM/Feb06

In The Large Merger Between

Growthpoint Properties Ltd

Acquiring firm

And

Tresso Trading 119 (Pty) Ltd

Target firm

Reasons for Decision

Approval

1. On 17 May 2006, the Tribunal unconditionally approved the proposed merger transaction between the abovementioned parties. The reasons for the decision follow.

Parties

2. The acquiring firm is Growthpoint Properties Ltd (“Growthpoint”) a variable rate stock company listed on the Johannesburg Stock Exchange in the real estate sector.¹ Growthpoint is not controlled by any entity. The primary target firm is Tresso Trading (Pty) Ltd (“Tresso”) an unlisted property loan stock company.²

Transaction

3. The transaction involves Growthpoint acquiring twenty-four immovable properties (“Tresso Properties”) as well as all the rights, title, interests, lease agreement, service and maintenance contracts in respect of each of the Tresso Properties.³ At the hearing Ms Gaigher appearing for the merging parties informed the Tribunal that one of the Tresso properties the Umhlanga Hospital was subject to a pre-emptive right by the lessee of that property and that the pre-emptive right was exercised and it is not part of the transaction anymore.

Rationale of the transaction

4. From Growthpoint’s perspective, the Tresso property portfolio will increase its property asset base as well its absolute exposure in the Western Cape, a region where it has been traditionally difficult to find good commercial

¹ A list of all the firms that hold more than 5% of the issued capital of Growthpoint can be found on page 3 of the Commission’s Report. A list of companies controlled by Growthpoint appears on page 21 of the Record.

² Details of subsidiaries and associated companies of Tresso appear at page 124 of the Record.

³ A detailed list of the properties to be acquired can be found on pages 4 of the Commission’s Report.

properties. Growthpoint also considers that the proposed acquisition will increase its exposure to the Gauteng, Western Cape and KwaZulu Natal commercial, retail and industrial sectors, all of which are expected to provide attractive returns over the medium term. The proposed transaction will also improve the overall quality of Growthpoint's portfolio without significantly changing the sectoral or regional composition of the portfolio. For Tresso the transaction is motivated by its shareholders decision to divest from the property industry entirely.

The merging parties activities

5. Both Growthpoint and Tresso are loan stock companies. Both derive their income primarily on the rentals received from tenants in properties owned by them.

Relevant Market

6. The Commission defines the relevant markets as the markets for the provision of grade A office space in Bryanston/Epsom Downs, Rosebank/Hyde Park, Bellville/ Goodwood and Midrand/Olifantfontein nodes and the provision of industrial warehousing space in the Meadowdale node. The Commission also found that there is an overlap in the activities of the merging parties as they operate in the property market. According to the Commission in the narrow product market category they overlap in respect of Grade A and Grade B office property as well as industrial warehousing, industrial light manufacturing, industrial mini and midi unit, regional shopping centre and community shopping centres and other property types in particular medical property.

Competition Evaluation of the Merger

Grade A Office space in Rosebank/ Hyde Park node

7. The Commission's investigation revealed that the merging parties would enjoy a combined post merger market share of 14.62% in the market for Grade "A" office space in the Rosebank and Hyde Park nodes. We agree with the Commission that the combined market share is not significant so as to raise competition concerns. Pre-merger Growthpoint had an estimated market share of 13.67% and Tresso had 0.96% of the identified relevant market share.

Grade A office space in Bryanston/ Epsom Downs node

8. The Commission's investigation revealed that the merging parties would enjoy a combined post merger market share of 8.49%. According to the Commission this is unlikely to raise any competition concerns, as the market shares remain low. We agree with this conclusion. Pre-merger Growthpoint had a market share of 1.71% whilst Tresso had approximately 6.78% of the identified relevant market share.

Grade A office space in the Midrand/ Olifantfontein node

9. The Commission's investigation revealed that the merging parties would enjoy a combined post merger market share of 33.48%. At the hearing it turned out that although this was a high market share a further segmentation of the Midrand node could be made between the East and the West side of the highway. Ms L Steynberg, a representative of Tresso, also indicated that rentals do differ from one side to the other side. She also indicated that there is a difference in the market demand for properties on the one side of the highway versus properties on the other side of the highway. If Ms Steynberg were correct in this assertion there would be no overlap as the merging parties properties in Midrand fall on either side of the highway. We agree with the Commission that since the accretion in the market is only 1.6% it is unlikely to raise any competition concerns. Pre-merger Growthpoint had a share of 31.87% and Tresso 1.6%. It is therefore not necessary for us to determine whether the Midrand market can be further segmented between the East and West sides of the highway.

Grade A office space in Bellville/ Goodwood node

10. The Commission's investigation revealed that in this market Growthpoint would have a combined market share of 4.1%. According to the Commission no market data was available for the Bellville area, it only determined the parties market shares using data presented in the Goodwood area only. The Commission was of the view that should broader regional analysis incorporating the Bellville area be considered the market share is likely to be further diluted. According to the Commission no serious competition concerns are likely to arise in this market. We agree with the Commission's conclusion, as this merger does not lead to a significant market share for the merging parties.

Industrial warehousing space in the Meadowdale area

11. The Commission's investigation revealed that the merging parties would have a combined post merger market share of 2.4%. The Commission found that the market share would remain low and therefore unlikely to raise any serious concerns. We agree with this conclusion because, pre-merger Growthpoint had a market share of 1.8% and Tresso had 0.6% of the identified relevant market, therefore Tresso is not an effective competitor as its market share in the defined market is minimal.

Public interests

12. No public interest issues arise from this merger.

Conclusion

13. Based on the above, the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved.

N Manoim

26 May 2006
Date

Concurring: U Bhoola and M Holden

For the Merging Parties: Ms I Gaigher (Jowell Glyn & Marais)
For the Commission: Seema Nunkoo and Mogalane Matsimela (Mergers and Acquisitions)