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to	Vani Chetty/Mamta Nathoo Vani Chetty Competition Law (Pty) Ltd	*fax*	011 880 5773
	Legal Services Competition Commission		44283
ref	75/LM/Nov10	*date*	07 April 2011
from	Tebogo Mputle	*pages*	6 (including this page)
re	Reasons		

Attached please find the Tribunal's reasons for the decision in the above matter.

Regards

Tebogo Mputle

CC: Alex Constantinou - 44445

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:75/LM/Nov10

In the matter between:

GROWTHPOINT PROPERTIES LIMITED Acquiring Firm

And

DESIGN SQUARE (PTY) LTD Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member) Merle Holden (Tribunal Member)
Heard on	:	30 March 2011
Order issued on	:	30 March 2011
Reasons issued on	:	07 April 2011

Reasons for Decision

Approval

[1] On 30 March 2011 the Competition Tribunal ("Tribunal") approved the large merger between Growthpoint Properties Limited and Design Square (Pty) Ltd, in respect of their retail properties known as Brooklyn Mall and Design Square Shopping Centre respectively. The reasons for approving the proposed transaction are set out below.

The Parties to the transaction

[2] The primary acquiring firm is Growthpoint Properties Limited (Growthpoint), [1] a company incorporated in terms of the laws of the Republic of South Africa and listed on the Johannesburg Stock Exchange (JSE). Major shareholders in

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[1] http://www.growthpoint.co.za/Default.aspx

Growthpoint are the Public Investment Corporation, a BEE Consortium, Old Mutual, Stanlib, Investec and Investment Solutions. Growthpoint owns Brooklyn Mall, a mall next to Design Square Shopping Centre.

[3] The target firm is Design Square (Pty) Ltd (Design Square), a company incorporated in terms of the laws of the Republic of South Africa, which is a wholly owned subsidiary of Highgrove Property Holdings (Pty) Ltd which is ultimately owned by Atterbury Investment Holdings ("AIH")[2]. Design Square owns Design Square Shopping Centre.

[4] In essence, the transaction is a share swap agreement between the owners of the two adjacent shopping centres (Brooklyn Mall & Design Square Shopping Centre). The transaction will result in Growthpoint owning 82% in Design Square while Design Square will acquire 18% in Brooklyn Mall. This transaction only relates to these two properties.

[5] After the implementation of the transaction ownership in the two centres will therefore be as follows;

a. Growthpoint – 82% share in Brooklyn Mall and 82% share in Design Square.

b. Design Square – 18% share in Design Square and 18% share in Brooklyn Mall.

The activities of the parties

[6] Growthpoint is a property investment holding company with Assets valued at over R24 billion, with a diversified portfolio made up of 430 properties comprising retail, office and industrial properties situated throughout South Africa. In respect of the current transaction, Growthpoint owns Brooklyn Mall, a regional sized centre, situated in Brooklyn, Pretoria which comprises of rentable retail space and B-grade office space. In respect of further office space in the area, Growthpoint owns a single A-grade office in the Brooklyn area. Growthpoint also has in its portfolio Hatfield Plaza, Hatfield Mall, Campus Building, Standard Plaza, Arcadia Shopping Centre and Kolonnade Shopping Centre.

[7] Design Square owns a single asset being Design Square Shopping Centre comprising of rentable retail space and A-grade office space. The Atterbury Group which owns Design Square, also controls *inter alia* Glenfair Centre in Lynwood Manor and Atterbury Value Mart. The Atterbury Group's Assets are valued at over R7 billion and its diversified portfolio consists of 12 properties comprising of rentable retail space, rentable office properties and rentable industrial properties.

[8] The relationship between the parties is a broadly horizontal one in respect of retail and office space and there is no vertical relationship between the parties.

The Rationale

[9] The parties have drafted and submitted a Memorandum of Understanding in terms of which they will have joint management and control of the two centres after the implementation of this transaction.

[2] http://www.atterbury.co.za/index.aspx

[10] The parties further believe that this joint structure will enable them to compete with bigger centres, something they could not do individually due to their size and structure.

[11] The parties further believe that they can effectively operate and symbiotically benefit from each other by providing more options for their tenants. To this end, the parties have identified that certain tenants at Brooklyn Mall are more suited to being located at Design Square and certain tenants at Design Square are more suited to being located at Brooklyn Mall.

[12] Effectively the parties and their tenants, some of which were interviewed by the Commission in its investigation, believe that numerous efficiencies can be gained from exploring and exploiting the synergies between the parties' two properties.

[13] The continued separate operation and existence between Brooklyn Mall and Design Square does not put the parties in a position to best serve the needs of their customers. Together or as a more combined structure both physically and through their management the two centres can compete better with larger centres such as Menlyn and Woodland Boulevard.

The relevant market and the impact on competition

[14] The parties are of the view that the relevant product market is rentable retail space for community centres and rentable A-grade office space. An overlap exists between the two parties only in relation to rentable A-grade office space.

[15] In the parties view Brooklyn Mall should be classified as a regional centre, as it has a wide variety of stores and is more geared towards the convenience shopper, whereas Design Square should be classified as a lifestyle centre because its tenant mix is geared toward restaurants, decor and design shops.

[16] In its assessment, the Commission submitted that there is no overlap to consider between the parties in terms of retail space. The properties controlled by Growthpoint in the area are not lifestyle centres like Design Square. Even in the overlapping in geographical area between the parties, the market share increment is minimal and therefore will be unlikely to cause a substantial prevention or lessening of competition in the Brooklyn node.

[17] Thus both the parties and the Commission treat shopping centres as differentiated products the implication being that centres sufficiently differentiated may not act as constraints on one another.

[18] The parties independently own other retail properties in the Pretoria area that do not form part of the merger. The Tribunal at its hearing raised concerns that the joint management committee to run the Brooklyn and Design Square Properties would create a forum for meeting between the managements of the rival property owing groups that could facilitate co-ordination in respect of these other properties as well.[3] Mr Wilken from AIH reassured the Tribunal that it would be difficult for the parties to coordinate their behaviour to drive up rental prices in

[3] As per the Joint Management Committee to be formed in terms of the Memorandum of Understanding. This Committee will also hold meetings.

other properties (that they separately own in the area) and the current properties (Brooklyn Mall and Design Square) due to rentals being linked to turnover and also to the positioning of tenant.In addition most leases are of long duration and cannot be altered prior to expiry.

[19] The Commission arrives at the conclusion that the merger does not result in any substantial accretion in market share. Further the Commission is of the view that the market in which the parties operate is fragmented, there are low barriers to entry and the post merger market shares are low.

[20] In light of the above, the Commission found that the transaction would not substantially prevent or lessen competition in the relevant markets.

Public Interest

[21] The transaction will have no effect on employment as no redundancies or overlapping positions will result from it.

[22] There are also no public interest issues to consider in this transaction and the tenants in the two properties only had positive feedback with regards to the merger.

CONCLUSION

[23] The Tribunal has considered the relevant information in this transaction as well as the Commission's modified approach in analysing the relevant market and geographic area. We do not need to accept that the differentiation contended for by the Commission justifies the conclusion that the centres are not competitors and hence that the merger does not lead to a substantial lessening and prevention of competition. Even if they exerted some constraint on one another pre-merger there appears to be sufficient competition still in the area post merger. We accept as well that co-ordination whilst facilitated by the merger would still be difficult to implement due to the nature of the industry as explained by Mr Wilken.

[24] Accordingly, the merger is approved without conditions.

N Manoim **DATE** 07 April 2011

Y Carrim and M Holden concurring.

Tribunal Researcher:	Songezo Ralarala
For the merging parties:	Vani Chetty of Vani Chetty Competition Law
For the Commission:	Jabulani Ngobeni Alex Constatinou Grace Mohammed

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