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| | Legal Services<br>Competition Commission | | 44283 |
| *ref* | 16/LM/Mar11 | *date* | 26 May 2011 |
| *from* | Abigail Mashigo | *pages* | 06 (including this page) |
| *re* | Reasons | | |



Attached please find the order and merger clearance certificate in the above matter.

Regards

Lerato Motaung

CC: Themba Mahlangu - 44196

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# COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:16/LM/MAR11**

In the matter between:

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| **GOVERNMENT EMPLOYEES PENSION FUND** | Acquiring Firm |
| **AND** | |
| **GROWTHPOINT PROPERTIES LIMITED** | Acquiring Firm |
| And | |
| **LEXSHELL 44 GENERAL TRADING (PTY) LTD** | Target Firm |

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|---|---|---|
| Panel | : | Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member) |
| Heard on | : | 04 May 2011 |
| Order issued on | : | 09 May 2011 |
| Reasons issued on | : | 26 May 2011 |

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## Reasons for Decision

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## Approval

[1] On 4 May 2011, the Competition Tribunal ("Tribunal") approved the large merger between Government Employees Pension Fund, Growthpoint Properties Limited, and Lexshell 44 General Trading (Pty) Ltd subject to a condition. We explain below our reasons for this conclusion.

## The Parties to the transaction

[2] The primary acquiring firms are Government Employees Pension Fund ("GEPF"), duly represented by Public Investment Corporation Limited ("PIC"),

and Growthpoint Properties Limited ("Growthpoint"). In addition to being its authorised representative, PIC, which is wholly owned by the South African Government, is also GEPF's investment portfolio manager.

[3] The primary target firm is Lexshell 44 General Trading (Pty) Ltd ("Lexshell"), a company jointly owned by Strawinsky Properties B.V and Istithmar South Africa FZE.

[4] On completion of the transaction, PIC through GEPF and Growthpoint will each hold 50% shareholding in Lexshell. They will thus jointly control Lexshell.

## The Rationale

[5] The acquiring firms believe that the transaction would enable both of them to improve the quality of their property portfolio and provide long term sustainable development of a unique asset.

## The parties' activities

[6] GEPF owns various assets which are invested in various classes including equities, money market and properties. Through its subsidiaries, it provides rentable shopping space and property management services. Its property portfolio includes office space property, retail property, industrial property, retail property and residential property. Growthpoint is a property investment company whose property portfolio includes retail, office and industrial property.

[7] Lexshell's main business is the ownership of developed and undeveloped land situated at Victoria and Alfred Waterfront in Cape Town ("V&A Waterfront"). V&A Waterfront property consists of retail, hotel and leisure, office, residential, banqueting and conferencing, and industrial properties.

[8] Thus the two acquiring firms and the target firm are all engaged in the business of owning and renting retail and commercial property.

## The relevant market and the impact on competition

[9] The Commission found that there is a horizontal overlap in the activities of the merging parties in respect of the provision of rentable retail space relating to regional shopping centres; rentable office space in respect of grade A and grade B office space; rentable industrial space; the provision of hotel and leisure; and the provision of residential property.

[10] With respect to residential properties and hotel and leisure, the Commission found that there's no geographic overlap between the activities of the merging parties since the acquiring firms do not own residential properties and leisure and hotel properties within close proximity of the Waterfront area. The Commission also found that there is no overlap in the industrial property market as the industrial properties owned by the merging parties are used for different purposes.

[11] The Commission submitted that the relevant geographic market in relation to rentable retail space includes centres which are 10 to 35 km away from V&A Waterfront. For the provision of rentable office space, the Commission found that the relevant geographic market is the greater Waterfront area.

[12] It was submitted that post merger, in the market for the provision of rentable regional centres, the merging parties will have approximately 18% combined market share, which is too low to have any negative effect on competition. Further that, the presence of numerous other regional shopping centres around the greater Waterfront area created an alternative to tenants if the merging parties unilaterally increased their prices.

[13] In relation to the market for grade A office space, with a combined post merger market share of approximately 21%, the Commission submitted that the market share was too low to result in substantial lessening or prevention of competition. Further that the merged entity would face competition from other players within the market, such as Old Mutual, Investec, Gensec and Liberty. Views from the merging parties' customers indicated some degree of countervailing power on the part of tenants due to their ability to negotiate for better rentals and also indicated that should the merging parties increase their prices, they would consider relocating to other properties within the Cape

Town CBD.[1] In the market for the provision of grade B office space, the Commission submitted that the post merger market share of less than 25% was too low to result in any substantial lessening of competition.

[14] At the hearing it was established that the PIC will have the right to appoint directors to the board that will control Lexshell and thus the Waterfront property. The PIC also has the right to appoint a director to the board of Pareto Limited ("Pareto"), a joint venture company that the PIC has with Eskom Pension and Provident Fund, which controls Cavendish Square and Tygervalley Mall, which are on the Commission's analysis, competitors of the Waterfront. We raised this as a concern at the hearing and Mr Zagaretos for the PIC advised that its stake in Pareto was a non-controlling one. Nevertheless, he conceded that the PIC would be able to appoint the same director to both boards. If this happened the merger would make co-ordinated effects in the market more likely as the merger would create an opportunity for information exchange. Mr Zagaretos responded by stating that the PIC had no intention of appointing the same person to both boards. We asked if the PIC was willing to give an undertaking in that respect which could be made a condition for the approval of the merger and it agreed to do so.

[15] The undertaking provides that for as long as PIC is a shareholder (directly or through any other controlled entity) in Lexshell and also holds a minority interest in Pareto, any individual appointed by the PIC to serve on the board or as an executive in Lexshell, will not be appointed to the board of Pareto or any of Pareto's subsidiaries.

## CONCLUSION

[16] We are satisfied that if the undertaking becomes a condition for the approval of the merger it will reduce the possibility of information exchanges taking place between management of rival shopping centres.

[17] There are no public interest issues as there is no anticipation of retrenchments arising from the merger. The Tribunal accordingly approves this merger subject to the above condition.

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[1] See views expressed by customers of the merging parties at Competition Commission Recommendation page 34-35

**NORMAN MANOIM**

26 May 2011
**DATE**

**Y Carrim and A Wessels concurring.**

Tribunal Researcher: Tebogo Hlafane

For the merging parties: Cliffe Dekker Hofmeyr

Glyn Marais Attorneys

For the Commission: Mr Themba Mahlangu

* * * Communication Result Report ( 26. May. 2011 15:42 ) * * *

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