

In The Large Merger Between:

Growthpoint Properties Limited

And

Tresso 119 (Pty) Ltd

Reasons for Decision

Approval

On the 17 May 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Growthpoint Properties Limited and Tresso 119 (Pty) Ltd. The reasons for this decision follow.

The Parties

1. The primary acquiring firm is Growthpoint Properties Limited ("Growthpoint").¹ The primary target firm is Tresso 119 (Pty) Ltd ("Tresso").²

The transaction

2. The transaction involves Growthpoint acquiring a portfolio of immovable properties,³ as well as all right, title and interest in and to lease agreements and service and maintenance contracts in respect of the premises forming part of each of the properties. In terms of the Sale Agreement, Growthpoint may nominate a purchaser who will take transfer of the acquisition instead of Growthpoint. In their filing with the Commission, the merging parties indicated that Growthpoint was investigating the implementation of a securitisation scheme to fund the acquisition, which would involve the nomination of a *trust* as a purchaser under the Sale agreement.
3. After the Commission's referral, the Tribunal was informed⁴ that the securitisation scheme would go ahead and that Growthpoint would take transfer of certain of the properties and that certain of the properties would be transferred to a trust. According to the parties, the

¹ A list of the firms, which hold more than 5% of the issued capital of Growthpoint, can be found on page 5 of the Record. A list of the companies controlled by Growthpoint appears at page 40 of the Record.

² Details of the 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 279-304 of the record as well as in an updated Appendix attached to correspondence from Jowell Glyn & Marais to the Tribunal dated 11 May 2005.

⁴ Correspondence from Jowell Glyn & Marais to the Tribunal dated 11 May 2005.

trust was yet to be created and Growthpoint would be the vested capital and income beneficiary of the trust.

4. At the hearing of the matter on 16 May 2005, the Tribunal was informed that the documentation relating to the creation of the trust had still not been finalised. The parties, however subsequently provided the Tribunal with a written undertaking that copies of such trust documentation will be lodged with the Tribunal as soon as these had been finalised.⁵

Rationale for the transaction

5. From Growthpoint's perspective, the acquisition offers investors geographically and sectorally diversified exposure to the physical property assets underpinned by long-term, sustainable, escalating income streams. Growthpoint will also be exposed to the office and industrial sectors in the Western Cape region.
6. For Tresso, the transaction was motivated by its shareholder's need for cash, which resulted in the identification of certain properties, which could be sold.

The Parties' Activities

7. Both Growthpoint and Tresso are property loan stock companies and hence involved in the property industry. Both parties derive their income primarily from rentals received from tenants in properties owned by them. These properties are located throughout South Africa.⁶ Growthpoint also derives income from investments.⁷
8. The Commission found that parties activities overlapped particularly in the following markets:
 - i) Grade A office space in Sandton, Parktown and Midrand;
 - ii) Grade B office space in Sandton, Parktown and Pretoria CBD; and
 - iii) Light industrial property in Johannesburg South and Cape Town.

Impact on competition

9. According to the Commission, the combined market share of the merging parties in all but one of the above overlapping markets is relatively low.⁸ In the market for Grade B office space in Sandton, the post merger market share is approximately 23%. According to the Commission, while this figure appears high, the market share data is based on industry data supplied by the South African Property Owners Association ("SAPOA"), and therefore includes only SAPOA members. If non-members' data is added, the Commission submits that the merging parties market shares will reduce.
10. The Commission was of the view that no competition concerns arise out of the transaction as post merger, the merged entity will compete with a number of large property companies in the identified markets.⁹ According to the parties, there also exists significant countervailing power from tenants, which increases due to the existing oversupply of

⁵ The undertaking was provided on the 16 May 2005.

⁶ Tresso also owns a hotel and shopping centre in Namibia.

⁷ See page 264 of the record for a list of the companies Growthpoint holds interest in.

⁸ See Page 6-7 of the Commission's Report.

⁹ See list on page 7 of the Commission's Report.

commercial property. With regard to industrial warehousing, the parties submit that this market is very competitive and tenants will generally tend to migrate to those premises in any particular area in respect of which they are offered the most attractive terms.¹⁰

Conclusion

11. Based on the above, we are satisfied that the transaction will not result in a substantial lessening of competition in the identified markets. We have no other concerns and are satisfied that there are no significant public interest issues, which arise, and we accordingly approve this transaction unconditionally.

Y Carrim

9 June 2005
Date

Concurring: U Bhoola and M Mokuena

For the merging parties: I Gaigher (Jowell Glyn & Marais)

For the Commission: E Mtantato (Mergers and Acquisitions)

¹⁰ See pages 275-278 of the record.