

In the matter between:

**REALTY DYNAMIX 73 (Pty) Ltd and**

**PANGBOURNE**

Acquiring firms

And

**SEVEN PROPERTIES OF ASSETZ PROPERTY**

**INVESTIMET FUND AND THREE PROPERTIES**

OF PANGBOURNE PROPERTIES Ltd

Target firms

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Panel : DH Lewis (Presiding Member), N Manoim (Tribunal Member), and  
Y Carrim (Tribunal Member)

Heard on : 26 September 2007

Order issued on : 26 September 2007

Reasons issued on : 10 December 2007

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## **REASONS FOR DECISION**

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### **APPROVAL**

[1] On 26 September 2007, the Tribunal issued a merger clearance certificate in which the merger between Realty Dynamix 73 (Pty) Ltd and Pangbourne Properties Ltd, the acquiring firms, and Seven Properties of Assetz Property Investment Fund and Three Properties of Pangbourne Properties Ltd, the target firms, was unconditionally approved.

### **THE PARTIES**

[2] There are two primary acquiring firms; the first is Realty Dynamix 73 (Pty) Ltd ("Realty"), a wholly owned subsidiary of Assetz Property Investment Fund ("Assetz") a joint venture company jointly controlled by three Trusts; the Cairns Trust, the Shannon Trust, and the Reform Trust (Frolic) ("the Trusts"). Realty does not control any firm. It is a shelf company recently established for the purposes of this transaction, and owns a property in Erf 84 Meyersdal Nature

Estate Extension 6 Township (“Meyersdal”).

[3] The second acquiring firm is Pangbourne Properties Limited (“Pangbourne”), a property loan stock company which holds industrial, office and retail properties in South Africa, and has various shareholders in South Africa. Pangbourne is neither directly nor indirectly controlled by any single shareholder.

[4] The target entities comprise of seven properties of Assetz and three grade A properties of Pangbourne, together with their property letting businesses. Assetz properties consist of 1) ERF 167 Roggebaai Cape Town from Kristabel a grade A office; 2) PORTION 1 OF ERF 6 Sandown Township from Port Ferry (“the ENS building”) a grade A office; 3) ERVEN 2484 Fourways Township (“Leslie Road Offices”) a grade A office; 4) ERVEN 2485 Fourways Township (“Leslie Road Showroom Building”) from Pre-Paid Direct which is a light industrial showroom; 5) PORTION 1 OF ERF 766 Woodmead Ext. 22 Township from Ironmail (“the Transtel Building”) a grade A office; 6) PORTION 33 OF ERF 4668 Bryanston Township from Library Park (“Library Office Park”) a grade A office and; 7) ERF 9859, Cape Town from Enforced (“Bloomsbury Cape Town”) which is also a light industrial showroom. The three grade A properties of Pangbourne with office letting business are: 1) Sandown 01 (“the Kessel Feinstein Building”); 2) Sunninghill 01 (“the DRA Minerals Building”); 3) Curson (“the Gallo Building”).

## **THE TRANSACTION**

[5] The proposed transaction entails two interrelated steps. The first step concerns Realty’s acquisition of three grade A office properties together with their property letting businesses from Pangbourne. The second step involves the acquisition by Realty of two light industrial properties; i.e. showrooms, together with property letting business from Assetz. It is common cause between the merging parties and the Commission that this step will be effected by way of internal restructuring and does not result in a change in control as Realty is a wholly owned subsidiary of Assetz.

[6] In terms of the second step, Pangbourne will, in exchange for the three properties sold to Realty, acquire 74,58% of the issued share capital of Assetz. The effects on the Trusts’ shareholding will be that the Toad Hall Trust will acquire 2, 9%, and collectively the Trusts will hold 25,42% of the issued share capital of Assetz.

[7] Furthermore a voting pool agreement entered between Pangbourne, the Trusts and the Toad Hall Trust in relation to the shareholding in Assetz, will result in Pangbourne having sole control over Assetz.

[8] The central outcome of this transaction is that the properties and the property letting businesses of Assetz and Pangbourne will be integrated and will be held by Realty. Realty in turn will be a wholly owned subsidiary of Assetz and Pangbourne will have sole control of

Assetz.

[9] The overlap in this proposed transaction exists in the activities of the merging parties in grade A office property and show room properties.<sup>1</sup>

## **THE REVELANT GEOGRAPHIC MARKET**

### **Grade A office Property**

[10] The approach of this Tribunal in defining the relevant geographic market for office properties has been on the basis of nodes. Nodes consist of geographic demarcations sufficiently close to justify the conclusion that they should be treated as relevant geographic markets and may include more than one geographic suburb.<sup>2</sup> The geographic overlap in this case is in respect of grade A offices in the Bryanston node and Sandton node. The Commission identifies a further potential geographic overlap in the Woodmead-Sunninghill node based on the fact that the Transtel Building is located in the Woodmead area and the DRA Minerals Building in the Sunninghill/Paulshof area. These areas are only in a three kilometer radius from each other. Consequently we accept that the geographic overlap is in respect to grade A offices in the Bryanston node, the Sandton node and the Woodmead-Sunninghill node.

### **Showroom Properties**

[11] Pangbourne holds one show room property in Gezina, Pretoria, one in Cape Town and another in Johannesburg. Realty will acquire showroom property from Assetz in Cape Town and Johannesburg. Given the fact that Realty does not have any showroom property in Pretoria, we accept that there is no overlap between Pangbourne and Realty regarding showroom property situated in Pretoria. The relevant showroom properties are those located within the Cape Town and Johannesburg areas.

[12] In Cape Town, Pangbourne's showroom properties are situated in the Goodwood/Parow/Bellville node and the Claremont/Kenilworth/Wynberg node and Realty's showroom is situated in the Cape Town CBD node. These properties are more than a 10 kilometre radius from each other. In Johannesburg, the showroom property held by Pangbourne is situated within the Woodmead-Sunninghill node, while Realty's is situated in the Fourways/Dainfern/Lonehill node ("the Fourways node").<sup>3</sup> These properties also do not fall within a 10 kilometer radius of each other and cannot reasonably be regarded as substitutes at a nodal level. In the circumstances, we do not deal with the overlap in showroom properties any further.

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1 See pg. 5 of Commission's recommendations report where reference is made to several large property merger cases decided by the Tribunal, where the Tribunal defines "office properties" and "grade A office property" (29/LM/Jun03; 34/LM/Jul03, 27/LM/Apri04, 66/LM/Jul05 and 68/LM.Jul05)

2 See *ibid Primegro Properties Ltd and Growthpoint Properties Ltd* 29/LM/Jun03

3 See pg 666 of the record

[13] The competition analysis for grade A office space is dealt with below.

## COMPETITION ANALYSIS

### Horizontal effects

[14] The merging parties submitted the following market shares estimates for Grade A office space based on data gathered from property industry market leaders. The data reflects relatively low market shares in all the relevant geographic markets for the merged entity:

RELEVANT GEOGRAPHIC MARKET	MARKET SHARES
Sandton, Gauteng	1.62%
Bryanston/Epsom downs node	0.36%
Woodmeat/Sunninghill/Paulshof node	0.85%

### Vertical effects

[15] The transaction does not give rise to any vertical integration between the merging parties.

[16] We find that the above transaction does not give rise to any competition concerns. The combined shares of the merged entity in the market for grade A offices remains relatively low. Realty will remain a small player among various other players in the relevant property market which include large players such as Growthpoint Dimension Data and Emira.

## CONCLUSION

[17] There are no public interest issues, and we find that the merger is unlikely to substantially prevent or lessen competition. Accordingly this merger is approved unconditionally.

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Y Carrim  
Tribunal Member

10 December 2007

Date

D Lewis and N Manoim **concur** in the judgment of Y Carrim

Tribunal Researcher: L Xaba

For the merging parties : Edward Nathan Sonnenbergs

For the Commission : I Selaledi

(Mergers and Acquisitions)