

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 94/LM/Nov06

In the matter between:

Growthpoint Properties Limited

AFirm

And

Paramount Property Fund Limited

Target Firm

Panel: N Manoim (Presiding Member) Y Carrim (Tribunal Member)
and M Mokuena (Tribunal Member)

Heard on: 13 December 2006

Order issued on: 14 December 2006

Reasons issued on: 19 January 2007

Reasons for Decision

APPROVAL

1] On 14 December 2006, the Tribunal approved the merger between Growthpoint Properties Limited and Paramount Property Fund Limited. The reasons for approval follow.

THE TRANSACTION

2] Growthpoint Properties Limited ("Growthpoint") intends increasing its stake in Paramount Property Fund Limited ("Paramount") by making an offer to purchase the shares held by the minority shareholders of Paramount. Post merger, Growthpoint seeks to have sole control of Paramount.

3] Both Growthpoint and Paramount are property loan stock companies listed on the Johannesburg Stock Exchange in the real estate holding and development sector.

Neither Paramount nor Growthpoint are controlled by any single shareholder.

4] Firms holding more than 5% of the issued share capital of Growthpoint are -

Old Mutual Asset Management	12.6%
BEE Consortium	10.5%
Standard Bank of South Africa	8.2%
Investec Asset Management	8.2%
Public Investment Commission	5.1%

5] Firms holding more than 5% of the issued share capital of Paramount are:

Growthpoint	41.9%
Redefine Income Fund Limited (through its wholly owned subsidiary Outward Investments (Pty) Ltd)	20.1%

6] Growthpoint's increased stake in Paramount (41.9%) has exceeded the 35% threshold prescribed in terms of the Securities Regulation Panel Rules. Accordingly Growthpoint is obliged to make an offer to all the remaining shareholders of Paramount. For Paramount, its shareholders have the opportunity to realise their investment.

COMPETITION ANALYSIS

7] As stated above, the merging parties are involved in the property sector. Redefine Income Fund, Paramount's second largest shareholder is also involved in the property sector, a fact both the Commission and the parties neglected to take into consideration in their analysis of the transaction.

8] Instead having examined only the property portfolios of Growthpoint and Paramount, the Commission adopted the view that the transaction resulted in a horizontal overlap in the following markets:

1. Letting of Grade A office space in the Sandton node;
2. Letting of Grade B office space in the Sandton node;
3. Letting of light industrial space in the Pinetown/Westmead, Pinetown/New Germany, Germiston/Meadowdale, Kempton Park/Jet Park, Boksburg,

- Cape Town/Airport Industria and Vereeniging/Duncanville nodes; and
4. Letting of heavy industrial space in the Kempton Park/Isando node.

9] The Commission went on to analyse the above markets based on an examination of the market share data submitted by the merging parties.

10] According to the Commission's report, Growthpoint enjoys approximately 5% of the market for the letting of Grade A office space in the Sandton node, and Paramount approximately 1.3%. In the market for the letting of Grade B office space in the Sandton node, Growthpoint accounts for approximately 5.6% and Paramount approximately 4.3%. In both instances, the Commission was of the view that there was no significant increase in concentration level as a result of the transaction.

11] In the markets for the letting of light and heavy industrial space, the parties stated that they were unable to obtain information about the total gross lettable area (GLA) and therefore used as a proxy, the number of stands and/or total area in terms of square meters. Based on information provided by the parties, the Commission provided the following combined market shares:

Market	Geographic Node	Combined %
Letting of light industrial space	Pinetown/Westmead	4%
	Pinetown/New Germany	1%
	Germiston/Meadowdale	4%
	Kempton Park/Jet Park	4%
	Cape Town/Airport Industria	1%
	Boksburg	4%
	Vereeniging/Duncanville	0.4%
Letting heavy industrial space	Kempton/Isando	8.23%

12] The Commission submitted that due to the fact that the post merger market share of the merging parties in each of the relevant markets did not exceed 10% and changes in concentration levels remained relatively low, the transaction was unlikely to substantially prevent or lessen competition in the affected markets.

Redefine Income Fund

13] The conspicuous absence of an analysis of Redefine's property portfolio was raised by the Tribunal panel during the hearing of the matter on 13 December 2006.

14] Since Redefine and the merging parties are direct competitors, the panel was concerned that neither the Commission nor the merging parties had addressed it properly on the possibility of coordinated effects arising out of the transaction. The issue was exacerbated by the fact that Redefine had publicly indicated that it might not accept Growthpoint's offer and therefore remain a shareholder of Paramount.¹

15] The merging parties however argued that it was their "firm intention" to hold 100% of the shares in Paramount. At the time of the hearing, Growthpoint had already received verbal and written undertakings, some of which were irrevocable.² Once they acquired a 100%, they would de-list Paramount from the JSE.

16] While the merging parties acknowledge the possibility of Redefine (and/or other shareholders) keeping their stake in Paramount, the merging parties maintain that Growthpoint has no intention of entering into a joint venture or any type of cooperative agreement with Redefine. ³ Furthermore, Redefine had not made any request for board representation and Growthpoint "would not necessarily invite them to be participants on the board."⁴

17] Notwithstanding the merging parties' arguments, the Tribunal still had residual concerns relating to Redefine's shareholding and the lack of proper analysis. The need for further submissions or hearing on the issue however was obviated by the merging parties' offer of a written undertaking.

18] The merging parties have undertaken that-

1. *At the expiry of the offer period they will advise the Commission of the*

¹ According to the parties, they would be in discussions with Redefine in January 2007, prior to the close of their offer. See page 3 of the transcript.

² Page 3 of the transcript.

³ Page 5 of the transcript. According to the merging parties, not getting Redefine's stake would affect their strategy to de-list Paramount.

⁴ Page 5 of the transcript.

identities of all the shareholders holding more than 5% of Paramount and their respective shareholding/interest in Paramount; and

2. *, if a director is appointed to the Board of Paramount to represent Redefine and/or its subsidiaries (in the event that Redefine or its subsidiaries continue to hold shares of more than 5% in Paramount) the merging parties will notify the Commission of such appointment within 10 business days thereof.*⁵

CONCLUSION

19] We have accepted this undertaking and are satisfied that it adequately addresses our concerns. There are no public interest issues and we accordingly approve the transaction without conditions.

N Manoim

19 January 2007

Date

Y Carrim and M Mokuena concurring.

Tribunal Researcher: M Murugan-Modise

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

For the Commission: M Ngobese and H Ratshisusu (Mergers & Acquisitions)

⁵ Correspondence from Growthpoint's legal representatives (Jowell Glyn & Marais) to the Tribunal dated 14 December 2006.