



**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: LM158Nov16**

In the matter between:

**Growthpoint Healthcare Property Holdings Limited** Primary Acquiring Firm

and

**Growthpoint Property Fund Limited in relation to the** Primary Target Firm  
**Louis Leipoldt Private Hospital Property**

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Panel : Norman Manoim (Presiding Member)  
: AW Wessels (Tribunal Member)  
: Medi Mokuena (Tribunal Member)  
Heard on : 30 November 2016  
Order Issued on : 30 November 2016  
Reasons Issued on : 12 December 2016

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**Reasons for Decision**

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**Approval**

[1] On 30 November 2016, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Growthpoint Healthcare Property Holdings Limited ("Growthpoint Healthcare") and Vukile Property Fund Limited ("Vukile") in relation to the Louis Leipoldt Private Hospital Property ("Target Hospital Property"). The reasons for approving the proposed transaction follow.

**Parties to the transaction**

*Primary acquiring firm(s)*

[2] Growthpoint Healthcare is a wholly-owned subsidiary of Growthpoint Properties Limited ("Growthpoint"). Growthpoint is a property investment holding company

which is listed as a Real Estate Investment Trust (“REIT”) on the Johannesburg Securities Exchange Limited. Growthpoint’s property portfolio consists of rentable retail, office and industrial space located in the Western Cape, Eastern Cape, Gauteng and KwaZulu Natal provinces. Growthpoint also indirectly holds rentable residential space. Of relevance to the proposed transaction is Growthpoint’s hospital property known as N1 Cape Town Netcare, located in Goodwood, Cape Town in the Western Cape Province.

#### *Primary target firm*

[3] The Target Hospital Property is a hospital property that is let out to Mediclinic (Pty) Ltd (“Mediclinic”) for the operation of Louis Leipoldt Private Hospital. The Target Hospital Property is located in Bellville, Cape Town in the Western Cape Province.

#### **Proposed transaction and rationale**

[4] Through a Sale of Letting Enterprise Agreement, Growthpoint Healthcare will acquire the Target Hospital property from Vukile as a going concern. However, Growthpoint Healthcare will not acquire any direct interest or hospital license held by Mediclinic. Post-merger Growthpoint Healthcare will control the Target Hospital Property.

[5] Growthpoint Healthcare submits that the current transaction will assist its investment in the healthcare sector, whilst Vukile submits that the current transaction will assist it to focus on its strategy of being a retail focused fund.

#### **Impact on competition**

[6] The proposed transaction gives rise to a horizontal overlap.

[7] The Commission identified the relevant product market as the market for the provision of rentable space in hospital property in Cape Town and surrounding areas. The Commission’s assessment was based on the number of hospitals found in Cape Town and surrounding areas. Post-merger Growthpoint Healthcare will own two hospitals out of the 33 hospitals found in Cape Town

and surrounding areas. The Commission thus submitted that the proposed transaction is unlikely to raise any competition concerns as the current contract with Mediclinic will remain effective for ten years with a predetermined escalation rate of 7.5%. In addition to this, Mediclinic did not raise any concerns with the proposed transaction. The Commission thus submits that the proposed transaction is unlikely to substantially lessen or prevent competition in the identified market.

[8] The real issue in this transaction is whether, post-merger, the new owner of the property will have greater negotiating power *vis a vis* Mediclinic than did Vukile. If it did this might increase the costs of the hospital with a possible knock on effect to consumers of its services.

[9] In this regard the following answers that emerged at the hearing were instructive. In the first place the Target Hospital Property has never been owned by Mediclinic, so third party ownership of the property is not merger specific. Although Growthpoint owns hospital property in the vicinity this is not likely to give it more market power in relation to lease renewals than Vukile would have had. As Mr Muchanya of Growthpoint explained at the hearing, the re-negotiation of the lease has both landlord and tenant facing the same constraints as to the opportunity cost of not dealing with the other.<sup>1</sup> The merger does not change that dynamic and hence raises no competition concerns.

### **Public interest**

[10] The merging parties submitted that the proposed transaction will not result in an adverse impact on employment, nor does it raise any other public interest concerns.

### **Conclusion**

[11] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market.

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<sup>1</sup> See page 4 of transcript of hearing.

In addition, no public interest issues arise from the proposed transaction.  
Accordingly, we approve the proposed transaction unconditionally.

  
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**Mr Norman Manoim**

12 December 2016

DATE

**Mr AW Wessels and Ms Medi Mokuena concurring**

Tribunal Researcher: Caroline Sserufusa

For the merging parties: John Coetzee of Glyn Marais and Albert Aukema of Cliffe  
Dekker Hofmeyr

For the Commission: Dineo Mashego