

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM005Apr22

In the matter between:

Growthpoint Healthcare Property Holdings Ltd and
Bidvest Properties (Pty) Ltd

Primary Acquiring Firms

and

Growthpoint Securitisation Warehouse Trust

Primary Target Firm

Panel	:	I Valodia (Presiding Member)
	:	A Ndoni (Tribunal Member)
	:	F Tregenna (Tribunal Member)
Heard on	:	15 June 2022
Order issued on	:	15 June 2022
Reasons issued on	:	17 June 2022

REASONS FOR DECISION

- [1] On 15 June 2022, the Tribunal conditionally approved the large merger in which Growthpoint Healthcare Property Holdings Ltd (“GHPH”) and Bidvest Properties (Pty) Ltd (“Bidvest Properties”) each intend to acquire a 50% share in the target property, known as Adcock Ingram Midrand, from Growth Securitisation Warehouse Trust (“GSWT”). Post-merger, GHPH and Bidvest Properties will jointly control the target property.
- [2] GHPH¹ is an unlisted real estate investment trust (“REIT”) which invests exclusively in healthcare property assets. It also owns healthcare properties in the Western Cape, KwaZulu-Natal, and Gauteng. GHPH currently has seven healthcare assets, comprising six hospitals and one medical chamber building.
- [3] Bidvest Properties is a property investment company that manages properties owned by the Bidvest Property Holdings (Pty) Ltd which is wholly owned subsidiary of Bidvest Group Ltd, a JSE listed entity (“Bidvest Group”).²

¹ GHPH is controlled by Growthpoint Properties Ltd (“Growthpoint”). Growthpoint is a REIT listed on the JSE, which invests in a diversified portfolio of commercial, industrial, and retail assets both in South Africa as well as internationally.

² Bidvest Group Ltd is a leading business-to business services, trading, and distribution group, operating through six divisions: (i) Services, (ii) Freight, (iii) Branded Products, (iv) Commercial Products, (v) Financial Services and (vi) Automotive.

- [4] The target property is immovable property and letting enterprise that is wholly owned by GSWT, the seller in the transaction.³

Competition Assessment

Market definition: relevant product market

- [5] The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in respect of the holding, management and provision of light industrial / warehousing and distribution property. However, there is no overlap in respect of the properties held by GHPH as it does not have an interest in any industrial properties.
- [6] According to the merging parties, the target property falls within the warehousing and distribution category, and thus the relevant product market for the target property is the holding, management, and provision of light industrial / warehousing and distribution property. In assessing the relevant product market, the Commission considered the precedent set by the Tribunal in *Primegro Properties Limited and Growthpoint Properties Limited*,⁴ in which it was concluded that industrial property is a different property market that may be classified into light and heavy industrial property.
- [7] When assessing the proposed transaction, the Tribunal did not find any evidence suggesting that the relevant product market should be broader than the one defined above.

Relevant geographic market

- [8] The merging parties defined the relevant geographic market as being light industrial / warehouse and distribution properties situated within a 12km radius of the target property.
- [9] In assessing the relevant geographic market, the Commission considered the Tribunal's decision in the *Investec Property Fund Limited and certain property-owning companies and properties controlled by Investec Property (Pty) Ltd*,⁵ in which the Tribunal accepted the Commission's findings that light industrial properties are constrained within a 15-kilometer radius of the Germiston node. The Commission concluded to assess the effects of the proposed transaction within the Midrand area and surrounding nodes.
- [10] Based on the above, the Tribunal assessed the impact of the proposed transaction within the Midrand area and surrounding nodes.

³ GSWT is ultimately controlled by Growthpoint.

⁴ *Primegro Properties Limited and Growthpoint Properties Limited*, CT Case No: 29/LM/Jun03.

⁵ *Investec Property Fund Limited and certain property-owning companies and properties controlled by Investec Property (Pty) Ltd*, CT Case No: 020214.

Market shares

- [11] The merging parties submitted that post-merger, Bidvest Properties will have a market share of approximately [REDACTED], an increase of [REDACTED] and GHPH is a new entrant to the relevant market. The Commission found that the post-merger, the merged entity will have less than [REDACTED] market share, with a minimal accretion.
- [12] Having considered the above in assessing the proposed transaction, the Tribunal concluded that it is unlikely that the proposed merger will result in a substantial prevention or lessening of competition in any relevant market.

Relevant counterfactual

- [13] The Tribunal assessed the prospects for competition with the proposed transaction against the competitive status quo without the proposed transaction. Based on the above evidence, it concluded that there are no competitive concerns raised.
- [14] No third parties raised concerns regarding the effects of the proposed transaction on competition.

Information Exchange

- [15] The Commission raised concerns about the possible information sharing platform that can result from the proposed transaction because both Bidvest Properties and Growthpoint have investments in property sector and own properties that fall within the same product market. Therefore, the proposed transaction may create an opportunity for Bidvest Properties and Growthpoint to share information outside of the target property. The Commission requested the merging parties to propose a remedy that addresses this concern.
- [16] To offset the concerns raised by the Commission, the merging parties made an undertaking to enter into a confidentiality and information exchange agreement to the effect that information exchanged between the representatives of Bidvest Properties and Growthpoint will be limited to information relating to the target property, and that the representatives of Bidvest Properties and Growthpoint will not exchange and/or provide one another with any commercially or competitively sensitive information in relation to any other properties held within broader Bidvest and/or Growthpoint.
- [17] The merging parties will also be required to sign undertakings that they will at all times adhere to the agreement and will each develop and implement a confidentiality and information exchange policy.
- [18] Following the merging parties being amenable to such into a condition, the Commission concluded that the above undertaking sufficiently addresses the concern relating to the possible information sharing.
- [19] On the basis of the above undertakings, the Tribunal concludes that the information concern is adequately addressed by the conditions.

Public Interest

Effect on employment

- [20] The Commission considered whether the proposed transaction would have an adverse effect on the target property's current property management agent's employees, Growthpoint Management Services (Pty) Ltd ("Growthpoint Management Services"). The merging parties submitted that the transaction will not result in any negative effect on employment, in particular, there will be no transaction specific retrenchments or job losses.
- [21] The merging parties indicated that post-merger, Growthpoint Management Services will continue to manage the target property. One of the proposed transaction's conditions is that they enter into a written property management agreement with Growthpoint Management Services, under which Growthpoint Management Services will be appointed as manager of the letting enterprise (i.e. the status quo relating to management of the property will continue).
- [22] The Commission raised concerns about the likelihood of the proposed written agreement being exclusive. To guarantee that the final management agreement is not exclusive in any way, the merging parties have agreed to provide the Commission with the final signed agreement to that effect.

Effect on the spread of ownership

- [23] The merging parties submitted that the proposed transaction will not have adverse impact in respect of promoting greater spread of ownership for historically disadvantaged persons ("HDPs") and workers in the market. This is because, according to the merging parties, the target property is currently held by Growthpoint, which has 27.94 % black ownership and post-merger, the target property will be jointly controlled by the Bidvest Group which has black ownership of 39.02%. Therefore, there will be no reduction in ownership by HDPs as a result of the proposed transaction because target property will be jointly controlled by GHPH and the Bidvest Group.⁶
- [24] Having considered the above, the Tribunal concludes that the implemented transaction does not raise any public interest concerns.

Conclusion

- [25] For the reasons set out above, the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the transaction raises no public interest concerns.

⁶ GHPH is ultimately controlled by Growthpoint and hence 27.94% black owned and the Bidvest Group which has black ownership of 39.02%. See Merger Record, p70 of 647, para [10.3].

Signed by: Imraan Valodia
Signed at: 2022-06-17 22:27:43 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

17 June 2022

Professor Imraan Valodia

Date

Ms Andiswa Ndoni and Professor Fiona Tregenna concurring

Tribunal Case Managers:	Sinethemba Mbeki and Juliana Munyembate
For the Merging Parties:	Jac Marais and Misha Van Niekerk of Adams & Adams
For the Competition:	Busisiwe Ntshingila and Thabelo Masithulela