

SOUTH AFRICA / JUDGMENT

Growthpoint Properties Ltd v Joburg Stay (Pty) Ltd (LM048Jul21) [2021] ZACT 58 (15 September 2021) [2021] ZACT 58

COURT

Competition Tribunal

BEFORE

E Daniels, I Valodia, Y Carrim

CASE / FILE NUMBER

LM048Jul21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM048Jul21

In the matter between:

Growthpoint Properties Ltd

Primary Acquiring Firm

And

Joburg Stay (Pty) Ltd

Primary Target Firm

Panel:

E Daniels (Presiding Member)

I Valodia (Tribunal Member)

Y Carrim (Tribunal Member)

Heard on: 15 September 2021

Order Issued on: 15 September 2021

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved in terms of section 16(2)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition

Tribunal Rule 35(5)(a).

Presiding Member

15 September 2021

Mr Enver Daniels

Date

Concurring: Prof Imraan Valodia and Ms Yasmin Carrim

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM048Jul21

Growthpoint Properties Ltd (Primary Acquiring Firm)

and

Joburg Stay (Pty) Ltd

(Primary Target Firm)

REASONS

FOR DECISION

- [1] On 15 September 2021, the Competition Tribunal unconditionally approved a large merger between Growthpoint Properties Ltd (“Growthpoint”) and Joburg Stay (Pty) Ltd (“Joburg Stay”).
- [2] Growthpoint is not controlled by any single firm. Growthpoint is a JSE-listed real estate investment trust. It is a property investment holding company with a property portfolio consisting of rentable office, retail and industrial space across South Africa. Growthpoint acts as the landlord of the properties it owns and lets the properties to its tenants. It holds no student accommodation properties.
- [3] Joburg Stay is a property holding company wholly owned by Varsity Stay (Pty) Ltd (“Varsity Stay”).[1] Varsity Stay is solely controlled by the Feenstra Group (Pty) Ltd (“Feenstra Group”). [2] Joburg Stay currently owns a 50% share in three student accommodation properties in Johannesburg and the rental enterprises conducted thereon.[3]

- [4] The Competition Commission (“Commission”) found that the transaction involves various contractually inter-conditional steps that constitute one indivisible transaction.[4] Post-merger, Growthpoint will have control over Joburg Stay and the target properties[5] by virtue of its ability to appoint the majority of the board members.
- [5] The Commission found no horizontal overlaps in the activities of the merger parties as Growthpoint owns no student accommodation. The Commission found no vertical overlaps as they do not participate at different levels of the same supply chain.
- [6] The Commission considered whether the likelihood of the exchange of competitively sensitive information between Growthpoint and the Feenstra Group, given that (i) both firms are involved in the provision of rentable office space; and (ii) the transaction results in Growthpoint and the Feenstra Group having direct links to each other via their shareholding in the target properties’ fund; and (iii) Growthpoint will appoint Feenstra Group for an initial [...] to manage the target properties.
- [7] The Commission found that the merger parties’ office properties are unlikely to fall within the same geographic scope or pose a constraint on each other for competition assessment purposes. Accordingly, the Commission found that the proposed transaction was unlikely to create a platform for the exchange of competitively sensitive information to the detriment of competition in the office space market.
- [8] The merging parties provided an unequivocal statement that there will be no retrenchments as a result of the proposed transaction. The Commission found that the [...] employees involved in the target properties’ management would be transferred to the Feenstra Group on no less favourable terms and conditions.
- [9] The Commission found that the merger is likely to promote a greater spread of ownership by historically disadvantaged persons in the market because post-merger, Joburg Stay will benefit from Growthpoint shareholding by historically disadvantaged persons of above 40%.
- [10] No third party raised any concern.
- [11] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.

15 September 2021

Mr Enver Daniels

Date

Ms Yasmin Carrim and Prof Imraan Valodia concurring

Tribunal Case Manager: P Kumbirai

For the Merging Parties: S van der Meulen and S Manley of Webber Wentzel

For the Commission: B Chomela, Z Hadebe and T Masithulela

- [1] Varsity Stay controls three student accommodation properties known as: Varsity Studios and the rental enterprise conducted thereon ("VS Property") (100%); Festival Edge and the rental enterprise conducted thereon ("FE Property") (50%); Studios @ Burnett ("SB Property") (50%).
- [2] The Feenstra Group wholly controls Hatfield Studios (Pty) Ltd, which in turn owns the student accommodation property known as Hatfield Studios and the rental enterprise conducted thereon ("HS Property").
- [3] Kingsway Place in Auckland Park ("KP Property"); The Richmond in Auckland Park ("RM Property"); Richmond Central in Richmond ("KC Property").
- [4] The Feenstra Group will implement an internal reorganisation such that at the time of implementation of the proposed transaction, the KP Property, RM Property, RC Property, HS Property, VS Property, SB Property and FE Property (and the relevant rental enterprises conducted thereon) will be wholly owned by Joburg Stay.
- [5] The KP Property, RM Property, RC Property, HS Property, VS Property, SB Property and FE Property (and the relevant rental enterprises conducted thereon).

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