



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 20/LM/Mar12**

In the matter between:

**Growthpoint Properties Limited**

**Acquiring firm**

And

**Liberty Group Limited in respect of  
64.29% of the business enterprise  
known as Alberton City**

**Target Firm**

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Panel	:	Andreas Wessels (Presiding Member) Medi Mokuena (Tribunal Member) Takalani Madima (Tribunal Member)
Heard on	:	30 May 2012
Order issued on	:	30 May 2012
Reasons issued on	:	18 July 2012

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### Reasons for Decision

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### Approval

[1] On 30 May 2012 the Competition Tribunal ("Tribunal") approved the merger between Growthpoint Properties Limited and Liberty Group Limited in respect of a 64.29% interest in the business enterprise known as Alberton City. The reasons for approving the proposed transaction follow below.

## **Parties to transaction**

- [2] The primary acquiring firm is Growthpoint Properties Limited (“Growthpoint”), a listed property investment holding company. Its property portfolio comprises rentable retail, office and industrial space.
- [3] The primary target firm is the business enterprise known as the Alberton City shopping centre. Liberty Group Limited (“Liberty Group”) holds a 64.29% share in this business enterprise. Alberton City is categorised as a minor regional centre and is situated in the Alberton node, Gauteng.

## **Proposed transaction and rationale**

- [4] Growthpoint and Liberty Group are currently joint owners of Alberton City shopping centre. In terms of the proposed transaction, Growthpoint will acquire from Liberty Group its 64.29% interest in Alberton City. Growthpoint currently holds the remaining interest and will therefore upon implementation of the transaction have a 100% interest in and sole control over Alberton City.
- [5] The rationale for the proposed merger is that Growthpoint would like to make its own decisions relating to the management of the centre and as such, Growthpoint regards wholly owning, as opposed to jointly controlling, Alberton City as the most ideal method to achieve this.

## **Assessment**

- [6] This transaction represents a change from joint to sole control over Alberton City. Growthpoint does not own any other regional shopping centre in the Alberton node.
- [7] The Commission, however, raised a concern pertaining to an exclusivity clause in the lease agreement between the anchor tenant, namely Shoprite Checkers, and the landlord. The exclusivity clause was allegedly inserted at the request of Checkers when it was common practice to do so in order to protect their core business at the time,

namely their butchery. The Commission was concerned that this exclusivity clause could have the effect of preventing small businesses, i.e. butcheries, from gaining access to rentable retail space in the Alberton City shopping centre. In order to address this concern the Commission, based on certain undertakings by the merging parties, recommended that certain conditions be attached to the approval of this merger.

[8] The above-mentioned exclusivity clause in the lease agreement raises a public interest concern in terms of section 12A(3)(c) of the Competition Act of 1998 (Act No. 89 of 1998, as amended) and conditions are therefore warranted to address such concern. As such, the Tribunal has approved the proposed merger subject to the following conditions:

1. Growthpoint shall negotiate with Checkers in the utmost good faith to have the exclusivity clause in the lease agreement removed within thirty days of the Tribunal order.
2. Growthpoint shall within sixty days after entering into a new lease agreement with Checkers, provide the Commission with a report setting out in detail the extent to which they have complied with the condition of removing the exclusivity clause.

### **Public interest**

[9] No significant adverse effects on employment are envisaged as a result of the proposed transaction.<sup>1</sup> In the context of the above-mentioned exclusivity concern, we have imposed the aforementioned conditions aimed at addressing any effects on the ability of small businesses to become competitive.

### **CONCLUSION**

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<sup>1</sup> See Commission's Report, paragraph 8.1; also see pages 13 and 14 of the record.

[10] We approve the proposed merger subject to the conditions attached hereto as “**Annexure A**”.

ANDREAS WESSELS

18 July 2012  
**DATE**

**Medi Mokuena and Takalani Madima concurring**

Tribunal researcher: Nicola Ilgner

For the merging parties: Vani Chetty Competition Law

For the Commission: Zanele Hadebe