



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM041Jun19

In the matter between

Gemgrow Properties Limited

Primary Acquiring Firm

and

Arrowhead Properties Limited

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 10 July 2019
Order Issued on	: 10 July 2019
Reasons Issued on	: 10 July 2019

REASONS FOR DECISION

Approval

- [1] On 10 July 2019, the Tribunal unconditionally approved a transaction in terms of which Gemgrow Properties Limited ("Gemgrow") acquired sole control of Arrowhead Properties Limited ("Arrowhead").
- [2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Gemgrow is a public company incorporated in accordance with the laws of the Republic of South Africa and is listed on the Johannesburg Stock Exchange (“JSE”). The shares in Gemgrow are widely dispersed and as such no single shareholder controls the firm.¹ Gemgrow owns and controls various entities, namely, Gemgrow Assets Management Proprietary Limited; Cumulative Properties Proprietary Limited; and Moolgem Proprietary Limited.
- [4] Gemgrow is a Real Estate Investment Trust (“REIT”) that owns a diversified portfolio of office; retail; and industrial properties throughout South Africa.²

Primary Target Firm

- [5] Arrowhead is a public company incorporated in accordance with the laws of the Republic of South Africa and is not controlled by any one firm. Arrowhead is listed on the JSE and controls Vividend Income Fund Limited (100%); Vividend Management Group Proprietary Limited (100%); and Indluplace Properties Limited (60%). Significantly, Arrowhead controls Gemgrow by way of holding 53.3% of the of the issued share capital in Gemgrow.
- [6] Arrowhead is a REIT and conducts the business of investing in commercial properties, with a portfolio consisting of residential; retail; office; and industrial properties.³

¹ Gemgrow shares comprise of “A” and “B” linked shares. The largest shareholders in “A” shares are Coronation Fund Managers 21.2%; East & West Investment (16.4%); Mobe Investments (8.1%); Vukile Property Fund Limited (7.5%); Old Mutual Group (5.4%). The largest shareholders in “B” shares are Arrowhead Properties Limited (61.5%) and Vukile Property Fund Limited (28%).

² Gemgrow’s portfolio consists of 30% office property; 28% retail property; and 41% industrial property.

³ Arrowhead’s portfolio consists of 35% office property; 46% retail property; and 19% industrial property.

Proposed transaction and rationale

- [7] The proposed transaction is a reverse takeover whereby Gemgrow intends to acquire the entire issued share capital in Arrowhead. Existing shareholders in Arrowhead will be issued Gemgrow equity in return for their Arrowhead shares. Upon finalisation, Arrowhead will delist from the JSE and become a wholly owned subsidiary of Gemgrow.
- [8] The merging parties submitted a joint rationale stating that there is no longer a clear justification to retain two separate listings, and as such a simplified group structure would be more efficient. In addition, it was submitted that the proposed transaction would lead to improved liquidity, as well as improved access to equity capital markets which will support growth in the future. Furthermore, it was submitted that the merged entity could leverage off Gemgrow's dual class share structure.

Relevant market and impact on competition

- [9] The Commission considered the activities of the parties to the transaction and found that the proposed transaction resulted in a horizontal overlap as the merging parties are active in the market for the provision of office, retail, and industrial space in South Africa. The Commission found that the proposed transaction did not give rise to a vertical overlap.
- [10] The Commission found that pre-merger, Arrowhead controlled a majority of the issued share capital in Gemgrow as a result of a previous transaction.⁴ As such, the Commission noted that the proposed transaction is effectively an internal restructuring. Accordingly, the Commission found that the horizontal effects of the transaction are negligible as the proposed transaction is unlikely to change the market structure as there will be no accretion in market shares.

⁴ Arrowhead Properties Limited and Synergy Income Fund Limited (LM076Aug16) (Arrowhead/Synergy transaction).

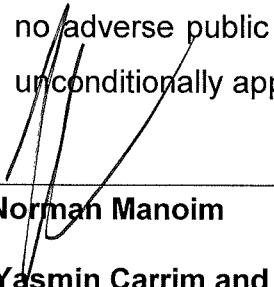
[11] In addition, the Commission analysed the effect of the merger on conditions imposed in the *Arrowhead/Synergy transaction* wherein an information sharing provision preventing the exchange of sensitive information between Vukile (a shareholder of Gemgrow) and Gemgrow (previously known as Synergy Income Fund Limited) was imposed. The Commission was satisfied by the merging parties' undertaking that the existing conditions will persist post implementation of the current transaction and will continue to offer effective protection against the exchange of competitively sensitive information.

Public interest

[12] The merging parties submitted that no retrenchments will occur as a result of the proposed transaction. There are no trade unions representing the employees of either Gemgrow or Arrowhead. However, their respective employee representatives, Mr David Samson (Gemgrow) and Ms Vicki Turner (Arrowhead) respectfully, did not raise any concerns regarding the proposed transaction.⁵

Conclusion

[13] In light of the above, we concluded that the transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no adverse public interest issues arise from the transaction. Accordingly, we unconditionally approved the transaction.



Mr. Norman Manoim

10 July 2019

Date

Ms. Yasmin Carrim and Prof. Imraan Valodia concurring.

Tribunal Case Manager : Andiswa Nyathi

For the Merging Parties : Albert Akuema of Cliffe Dekker Hofmeyr

For the Commission : Thabang Ndlovu and Wiri Gumbie

⁵ See page 420-424 of the merger record.