

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 123/LM/Dec 05

In the large merger between:

Vusani Investments (Pty) Ltd

and

Immovable Properties owned by Sanlam Life Insurance Ltd

Reasons for Decision

Approval

1. On 22 March 2006 the Competition Tribunal issued a merger clearance certificate approving the merger between Vusani Property Investments (Pty) Ltd and certain immovable properties owned by one or other of Sanlam Life Insurance Limited, Tralee Court (Pty) Ltd, and Brukkaros Investment (Pty) Ltd. The reasons appear below.

The Parties

2. The acquiring firm is Vusani Property Investments (Pty) Ltd ("Vusani Investments"), a newly formed company that does not control any firm and has never traded before. Vusani Investments is owned by Vusani Holdings (Pty) Ltd ("Vusani Holdings"), a shelf company. Vusani Holdings is owned by a number of shareholders in the following percentages:

?	Vusani Properties (Pty) Ltd (61.4%)
?	Mervyn Serebro Discretionary Trust (17.4%)
?	Elad Discretionary Trust (17.4%)
?	Mtupo Properties (Pty) Ltd (3.8%)

Some of these shareholders are subsidiaries and are controlled by other shareholders, the details of which are not significant for the purposes of this decision.¹

¹ Further details pertaining to these cross-ownerships can be obtained from page 3 of the record

3. The primary target is a number of immovable properties owned by one or other of Sanlam Life Insurance Limited (“Sanlam”), Tralee Court (Pty) Ltd (“Tralee”) and Brukkaros Investment (Pty) Ltd (“Brukkaros”). Tralee and Brukkaros are wholly owned subsidiaries of Sanlam. Sanlam is a wholly owned subsidiary of the Sanlam Group Limited, which has got many other subsidiaries not relevant for the purposes of this decision.

The Merger Transaction

4. Vusani Investment is acquiring from Sanlam, Tralee and Brukkaros certain immovable properties² comprising retail, office, and industrial properties and showrooms. Post merger Vusani Holdings will hold 100% of the ordinary share capital in Vusani Investments. This will give Vusani Holdings 70% voting rights in that company. Sanlam will acquire 21 924-preference shares in Vusani Investment, which will give it 30% of the voting rights.³
5. Sanlam will provide finance to Vusani investments to purchase the said properties, subject to the debenture subscription agreement entered into between Vusani Investments and Sanlam.⁴

Rationale for the Transaction

6. The parties have stated that because of the transformation process taking place in the property industry, Sanlam wants appropriate BEE ownership and management of the specified immovable properties. Vusani, which is a BEE company, wishes to participate in the property market and views this as an opportunity to do so.

The relevant markets

7. The relevant market can be categorised depending on the uses of the property and this includes, retail, office, and industrial properties and showrooms.

² Details of the properties can be found on page(s) 4, 43-45 of the record and on the table below. However, at the hearing the parties stated that two of the properties namely Metcash Thlabane and Metcash Thaba Nchu have fallen out of the transaction. (See page 2 of the Transcript for further details).

³ See page 528 of the record for further details.

⁴ Further details can be found on page 16 and 517-651 of the record.

8. As can be seen from the table below, the geographic market is spread over seven provinces in South Africa and there are two properties located in Namibia. Thus the market is not concentrated.

PROPERTY	ESTIMATED MARKET SHARE	REGION	TYPE
Bisho Indwe House	5%	Eastern Cape	Office
Rosettenville Shopping Centre	5%	Gauteng	Retail
Santrio Shopping Centre, Vanderbijlpark	5%	Free State	Retail
158 Jan Smuts & Auto Bavaria	1%	Gauteng	Office and Showrooms
Sanlam Building, Bloemfontein	5%	Free State	Office
81 Rissik Street, Johannesburg	1%	Gauteng	Office
Atrium Terrace, Randburg	1%	Gauteng	Office
West Gate Shopping Centre, Cape Town	5%	Western Cape	Retail
Sanlam Forum, Witbank	5%	Mpumalanga	Office
Odendaalsrus Shopping Centre	5%	Free State	Retail
Eersterus Plaza, Pretoria	1%	Gauteng	Retail
Market Square, King Williams Town	5%	Eastern Cape	Retail
Metcash, Wynberg	5%	Western Cape	Retail
Metcash, Vryheid	5%	Free State	Retail
SARS, Durban	5%	Kwazulu Natal	Office
Damelin College, Braamfontein	5%	Gauteng	Office
Metcash, George	5%	Eastern Cape	Industrial
Metcash, Ermelo	5%	Mpumalanga	Industrial
Metcash, Kimberly	2%	Northern Cape	Industrial
Metcash, Tsumeb	2%	Namibia	Industrial
Metcash, Walvis Bay	5%	Namibia	Industrial

9. Vusani Investments has not traded before and has no business or operating activities. There is no overlap between the activities of Vusani Investments and its holding companies, on the one hand, and Sanlam, Tralees and Brukkaros, on the other. Thus the merger does not lead to a substantial lessening or prevention of competition.
10. Post merger Sanlam will have a form of control of Vusani Investments mentioned in section 12 of the Competition Act, 1998 (as amended) as a result of the minority protections conferred upon Sanlam by the subscription and shareholders' agreements. However, this does not result in any change in the competitive landscape because Sanlam controlled the properties pre-merger. In relation to Vusani Investments there will be a change in control, the sense section 12 of the Act, as a result of the merger.

Public Interest

11. There are no public interest concerns.

Conclusion

12. We conclude that the merger will not lead to a substantial lessening or prevention of competition. There are no public interest concerns, which may alter this conclusion.

Y Carrim

07 April 2006
Date

Concurring: M Moerane and L Reyburn

For the merging parties:	Thabile Molokome, Cliffe Dekker
For the Commission:	Seema Nunkoo and Mogalane Matsimela, Mergers and Acquisitions