

## COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 25/LM/Feb09

In the matter between:

**Pahana Investments 93 (Pty) Ltd** Acquiring Firm

And

**Pahana Investments 91 (Pty) Ltd** Target Firm

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Panel : D Lewis (Presiding Member); Y Carrim (Tribunal Member) and N Manoim (Tribunal Member)

Heard on : 08 April 2009

Decided on : 08 April 2009

Reasons Issued on : 26 May 2009

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### Reasons for Decision

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#### Approval

[1] On 08 April 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Pahana Investments 93 (Pty) Ltd and Pahana Investments 91(Pty) Ltd. The reasons appear below.

#### Parties

[2] The acquiring firm is Pahana Investments 93 ("Pahana 93"), a company incorporated in accordance with the laws of the Republic of South Africa. Pahana 93 is jointly controlled by Vunani Capital (Pty) Ltd ("Vunani Capital")<sup>1</sup> with 51% and Absa Bank Ltd<sup>2</sup> with 49%.

[3] The primary target firm is Pahana Investments 91(Pty) Ltd ("Holdco"), a private company incorporated in accordance with the laws of the Republic of South Africa.<sup>3</sup>

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<sup>1</sup> Vunani Capital is a wholly owned subsidiary of Vunani Limited ("Vunani Limited"), which is in turn controlled by Vunani Group (Pty) Ltd ("Vunani Group"). Vunani Group is jointly controlled by the following trusts: The END Trust 39.9%; The Mabone Trust 24.94% and the Nicam Trust 24.94%.

<sup>2</sup> ABSA Bank is a wholly owned subsidiary of ABSA Group Ltd ("ABSA Group"). ABSA Group is controlled by Barclays, a public company listed on the London, Tokyo and New York Stock Exchanges. Pahana does not control any firm.

<sup>3</sup> Holdco is held by the following shareholders: Robert Leonard Starke 44.38%; Colin Shapiro 44.38% and Dawid van Der Merwe 11.24%. Holdco controls the following four firms Civils 2000 (Southern Cape) (Pty) Ltd ("Civils SC"); Civils 2000 (Pty) Ltd ("Civils 2000"); Civils (Plant Hire) (Pty) Ltd ("Civils Plant Hire"); and Road Smart Asphaltting (Pty) Ltd. These entities are collectively referred to as the "Civils entities".

## **Transaction**

[4] In terms of the proposed transaction, Pahana 93 intends to acquire 40% of the entire issued capital with minority protections rights in Holdco. On completion of the proposed transaction Pahana 93 will have joint control over Holdco.

## **Parties Activities**

[5] Pahana 93 is a special purpose vehicle which has not previously traded. The Vunani group of companies are involved in financial services and they are involved through Vunani Ltd in stock broking, property investment and property development, private equity, investment banking, asset management and research as well as corporate finance. The parties also submit that the Vunani Group is further involved through Vunani Capital in capital raising, transactional support services, due diligence investigations, capitalization issues and share buy backs. The Absa Bank is a registered financial services provider, which provides various banking and financial services, including, inter alia, retail and commercial banking, credit cards, investment banking, wealth management and long and short term insurance as well as property investment.

[6] Holdco is active regionally in the Western Cape and Eastern Cape through Civilis entities. Civilis SC and Civilis 2000 render services to firms in the construction industry, providing the following: bulk earthworks, being the moving of large quantities of soil; agricultural developments, being the provision of roads and related social infrastructure and construction of all types of infrastructure including, inter alia, roads, sewer and water reticulation and drainage structure. Road Smart specialises in road rehabilitation, relays and road surfacing. Civils Plant Hire sole assets comprise the equipment and machinery used by Civilis SC, Civilis 2000 and Road Smart. Civilis Plant Hire's activities are entirely in house for the above-mentioned firms.

## **Rationale for the Transaction**

[7] The acquiring group believes that the Civilis entities are an attractive investment opportunity to the shareholders and they also support their empowerment initiatives.

[8] Holdco views the transaction as a means by which, the Civilis entities through a strategic partnership (with particular emphasis on empowerment) can achieve a Level 9 registered contractor status.<sup>4</sup>

### **Competition Analysis**

[9] The Commission's investigation revealed that there is no overlap in the activities of the merging parties, as the acquiring firm does not have an interest in bulk earthwork, agriculture development and construction of infrastructure where the target firm is active. We therefore agree with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

### **Conclusion**

[10] There are no public interest issues. Accordingly the transaction is unconditionally approved.

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**Y Carrim**

Tribunal Member

N Manoim and D Lewis concurring

Tribunal Researcher : J Ngobeni

For the merging parties : Edward Nathan Sonnenbergs

For the Commission : Alex Constantinou (Mergers and Acquisitions)

**26 May 2009**

**Date**

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<sup>4</sup> The Civilis entities are currently rated as Level 8 registered contractors.