COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 27/LM/Apr04

In the large merger between:

Selcovest 23 (Pty) Ltd

and

Basfour 2776 (Pty) Ltd

Reasons for Decision

APPROVAL

On 7 June 2004 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Selcovest 23 (Pty) Ltd and **Basfour 2776 (Pty) Ltd** in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

1. The primary acquiring firm is Selcovest 23 (Pty) Ltd (which will later be renamed "Vukile Property Fund Limited" ("Vukile"), a newly incorporated company, ultimately controlled by Sanlam Limited. It is directly controlled by Sanlam Property Asset Management.

2. The primary target firms are Basfour, which is controlled by the Kuper Legh Group and Investec Property Group[1], Lekup No. 1 (Pty) Ltd and Lekup No. 2 (Pty) Ltd, both controlled by the individuals comprising the Kuper Legh Property Group.

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1 Kuper Legh is comprised of two individuals - David Kuper and John Legh

<u>Diagrammatic Representation of Transaction</u>

Sanlam Limited

52.5%

Selcovest/ VUKILE

acquiring

Basfour Lekup 1 Lekup 2

Kuper Legh

Controlled by

Investec

The Transaction

3. This notification comprises a series of transactions whereby certain office, industrial and retail property is being sold to a newly incorporated entity - Selcovest 23, (which will later be renamed "Vukile Property Fund Limited") - controlled by Sanlam. The shareholders of the target firms are selling their shares in and claims against these firms to Vukile. The shareholders are also the registered owners of the properties which will post-merger be transferred to Vukile. Therefore post-merger Vukile will own a portfolio of investment properties, comprising the Kuper Legh properties[2]. Sanlam

[2] The parties state that practically, the management of the properties will continue as before, ie by Sanlam Property Asset management in respect of its properties, Kuper Legh in respect of its properties.

Limited will initially hold 52.5% of the issued share capital of Vukile, later reducing its shareholding over time[3].

4. Other shareholders of Vukile will be:

- Kuper Legh as to 13.9% and
- Other vendors and the general public, as to 33.6%.

Merger Rationale

5. All life insurance companies have recently been selling investment properties to listed property companies and unit trusts for greater flexibility. It is more beneficial for Sanlam to "promote" the listing of property companies to which it can sell its investment properties, rather than sell to property companies already listed. It wishes to wishes to right-size its underlying asset portfolio.

Relevant Markets

6. The relevant market can be segmented into different types of property (either office, retail, commercial or industrial) depending on the use for which they will be put, as well as the grade of such property[4].

7. Sanlam has already begun commencing transfer of certain properties of Sanlam subsidiaries to them. The Commission identified the overlaps according to where the target property was located and the impact of adding those properties belonging to the Sanlam/Vukile portfolio. Therefore this analysis was done on the basis that Vukile has already taken transfer of the Sanlam group properties and is now in the market (even though it was not previously as it didn't trade) and so there is a deemed overlap. The Commission assessed the relevant markets as being:

i. Grade A rentable office space
ii. Grade B rentable office space
iii. Light industrial rentable space
iv. Heavy industrial rentable space
v. Rentable space for community shopping centres
vi. Rentable space for regional shopping centres
vii. Rentable retail space for warehouse centres

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3 This has been its stated strategy with other listed property companies in which it holds an interest, eg MICC Property Fund Ltd.

4 Grades reflect the degree of interior finish, space, availability of parking, environment and building systems. Refer to the South African Property Owners Association Vacancy Survey.

Geographic Markets

8. In addition the market is further segmented into different geographical areas or "nodes" where certain types of institutions tend to group, eg telecommunications firms tend to cluster around the Midrand area. All areas *within* that node compete with each other and are substitutable. The Commission identified four nodes – Parktown, Sandton, Midrand and Randburg. For instance, the Parktown node will comprise Parktown, Milpark, Braamfontein and Johannesburg CBD, and these areas will compete inter se. This is the accepted approach taken in previous property mergers as well as the approach adopted by market participants.

9. Therefore, though both parties may compete in various types of property segment, they may not overlap geographically. The Commission assessed overlaps between the location of Sanlam and Vukile properties on one hand and those of the target firms on the other. This is because Sanlam will post-merger control the properties via Vukile. Therefore, the overlapping product and geographic markets can be further delineated as follows:

   a. Grade A Office Sandton Node
   b. Grade B Office Parktown Node
   c. Office B Pretoria CBD
   d. Retail warehouse Johannesburg

Impact on competition

10. The combined market shares are as follows:

Relevant Market	***Vukile***	***Sanlam***	***Target***	***Combined***
Grade A Offfice Sandton Node		6.9%`	0.1%	**7%**
Grade B Office Parktown Node		3.3%	1.5%	**5%**
Office B PTA CBD	3.6%		7.7%	**11.3%**
Retail warehouse JHB		3%	0.5%	**3.5%**

11. The Commission is of the view that since the post-merger combined market share in any local market is less than 15% and therefore no competition concerns arise. We agree with this conclusion.

Conclusion

We conclude that the merger will not lead to a substantial lessening of competition and therefore approve the transaction unconditionally. There are no public interest concerns which would alter this conclusion.

____________ 21 June 2004

N. Manoim Date

Concurring: M. Holden, U. Bhoola

For the merging parties:	Sonnenberg Hoffman Galombik Attorneys
For the Commission:	M. van Hoven and K. Ramathula, Competition Commission