

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 17/LM/Feb06

In the large merger between:

The Commercial Property Finance Division of ABSA Bank Limited

and

Equity Estates (Pty) Ltd

Reasons for Decision

Approval

1. On 17 March 2006 the Competition Tribunal issued a merger clearance certificate approving the merger between the Commercial Property Division of ABSA Bank Limited and Equity Estates (Pty) Ltd. The reasons appear below.

The Parties

2. The acquiring firm is the Commercial Property Finance Division of ABSA bank Limited ("ABSA"). ABSA is a public company listed on the JSE Securities Exchange ("JSE") and is controlled by Barclays Plc.¹ ABSA controls a number of subsidiaries and associate companies.

¹ Barclays does not control any other firm in South Africa apart from ABSA. It has its principal place of business at 1 Churchill Place, Canary Wharf, London. See page 26 of record.

2.1. ABSA conducts business through its various subsidiaries in areas of retail banking, commercial banking, wholesale and international banking, financial services, assurance, insurance and wealth management services. ABSA also engages in property interest, shared services, specialist functions and strategic investments.

2.2. Equity Estates conducts business in the fields of property investment, management, development and related activities.

3. ABSA has non-controlling interests in the following property portfolios:

3.1.	Growthpoint	1.07%
3.2.	Resilient	1.13%
3.3.	Redefine	0.59
3.4.	Acucap	0.04%
3.5.	Paramount	28.14%
3.6.	iFour	5.48%
3.7.	Ambit	17.65%
3.8.	Vukile	2.16%
3.9.	Metboard	1.77%
3.10.	Pangbourne	3.5%
3.11.	Siyathenga	2.14%
3.12.	CBS	3.5%

4. The primary target firm is Equity Estates (Pty) Ltd ("Equity Estates"). Equity Estates is controlled by the following shareholders in the indicated percentages:

4.1.	David Brown Family Trust	58%
4.2.	Vaughn Richardson Family Trust	14%
4.3.	Carl Jankowitz Family Trust	8%

4.4. African Life Company Limited 20%

5. Equity Estates has a number of subsidiaries and associate companies namely:

- 5.1. Stand 1135 Houghton (Pty) Ltd;
- 5.2. Kilkishen Investments (Pty) Ltd;
- 5.3. Alpcoll (Pty) Ltd;
- 5.4. Malyork Estates (Pty) Ltd;
- 5.5. Ferns Investments (Pty) Ltd;
- 5.6. Highway Properties Houghton (Pty) Ltd;
- 5.7. MDB Holdings (Pty) Ltd; and
- 5.8. TPI Holdings (Pty) Ltd.

The Merger Transaction

- 6. ABSA will subscribe for 50% of the issued shares in Equity Estates.² ABSA's acquisition will be limited to the acquisition of immovable properties of grade A office space from Equity Estates.
- 7. Prior to ABSA acquiring 50% of the issued shares in Equity Estates, Equity Estates must dispose the rest of its business to MRX64 Investments Holdings (Pty) Ltd ("MRX").³ MRX will be owned by the existing shareholders of Equity Estates.⁴ MRX will be appointed to manage the business of Equity Estates post-merger.⁵
- 8. Post merger, ABSA and the current shareholders of Equity Estates will

² The terms for the subscription of shares in Equity Estates are recorded in the subscription agreement, a copy of which can be found on page 381 of the record.

³ This is to ensure that the only business that ABSA will acquire is limited to the acquisition of immovable properties of A grade office space.

⁴ At the hearing the parties were requested to confirm the shareholding of Equity Estates post-merger. The parties stated that Equity Estates will be 50% owned by ABSA and 50% owned by the existing shareholders in the proportions they currently own Equity Estates. See page 2 of the Transcript.

⁵ See page 28 for the parties' description of the transaction.

jointly own the following properties:

PROPERTIES CURRENTLY OWNED BY EQUITY ESTATES AND ITS ASSOCIATE SUBSIDIARIES

Property Address/ description	Area	Use
Woodmead Extension 26	Woodmead	A grade offices
RE of Erf 70 Woodmead Ext 28	Woodmead	A grade offices
RE of 877 Woodmead Ext 34	Woodmead	A grade offices
RE of Portion 1 of Erf 870 Woodmead Ext 28	Woodmead	A grade offices
Erf 15 Chislehurst	Sandton	A grade offices
Portion 1 of Erf 17 Chislehurst	Sandton	A grade offices
Portion 3 of Erf 17 Chislehurst	Sandton	A grade offices
RE of Portion 3 of Erf 17 Chislehurst	Sandton	A grade offices
RE of Erf 20 Chislehurst	Sandton	A grade offices
RE of Erf 33 Chislehurst	Sandton	A Grade Offices
Erf 15 City West	Johannesburg	Industrial
Portion 2 of Erf 204 Bruma	Bruma	A Grade Offices
Erf 86 & 88 Dunkeld West	Dunkeld	A Grade Offices
Stands 1135, 1136, 1140, 1141 Houghton	Houghton	A Grade Offices
Portion 1 & 3 of Erf 158 Lyme Park	Bryanston	A Grade Offices
Erven 1492-1497 Houghton	Houghton	A Grade Offices

Rationale for the Transaction

- 8.1. ABSA perceives the acquisition as an attractive investment in grade A office space given the steady increase in demand in the relevant nodes. Equity Estates, on the other hand, perceives the transaction as an opportunity for the recoupment of returns in the investments.

The relevant product markets

- 8.2. For the purposes of this transaction, the Tribunal accepts the parties' and the Commission's submission that grade A, B, C and P office property are different product markets. This grading is caused by differences in quality, age, finishing and there are also distinct rentals charged for the different categories of office blocks.
- 8.3. The Commission has correctly submitted that the activities of the parties overlap in grade A office space. Neither firm owns any P, E or C grade office property. No further analysis is necessary regarding those nodes.

The Geographic market

- 8.4. The Tribunal further accepts the Commission's submission that the market is local. The IPD has identified different nodes in consultation with market participants and South African Property Owners' Association ("SAPOA"). Different geographic areas that compete with each other are grouped into nodes. Market players usually compete with each other in the same node and properties in the same nodes command similar prices. The IPD has informed the commission that it has redefined these nodes generally speaking on a narrower basis. This, however, has little impact on the current transaction.
- 8.5. The overlap in the current transaction occurs in rentable A grade office property in Woodmead, Sandton and Bryanston.

Effect on competition

9. In analysing the market shares the parties relied on the information collected from IPD, SAPOA and industry experts. This data is not accurate since the IPD data is estimated to represent only approximately 60-70% of industry participants.
10. The markets and market share figures in Table 1 below are based on narrowly defined markets. The increase in market shares is insignificant

and the post merger market shares remain low and do not raise competition concerns.

Table 1: Post merger shares of the parties regarding grade A office space.

Name of Nodes	Estimated GLA square metres of Equity Estates	% market share pre merger	Estimated GLA square metres of ABSA	% market share pre-merger	Parties' combined % share post merger
Woodmead	26 048	9	6 628	2	11
Sandton	6 923	7	1 827	2	9
Bryanston	4 231	4	2 733	2	6

11. The parties have correctly submitted that if it is assumed that there is a broader rental market for A grade office space in the northern suburbs of Johannesburg,⁶ the proposed transaction will not give rise to any competition concerns because there is estimated to be a total of approximately 2 336 874 square metres of rentable A grade office space throughout the Northern suburbs of Johannesburg of which the combined firm will only own about 66 142 square metres, which is less than 3%.
12. Post merger the merged entity will continue facing competition from several major competitors such as Liberty Life properties, Old Mutual Properties and RMB/Momentum Properties in the office space sector.
13. There are no serious vertical integration issues raised by the proposed merger. Post merger ABSA will continue to rent A grade office space from other property owners and the merger will have no effect on those other property owners. Moreover, there are no incentives for ABSA to refuse to let office space to any of its competitors. Not only will it lose rental returns, but also the fact that the competitors are capable of establishing their own offices should ABSA seek to prevent Equity Estates from letting property to them.

⁶ The broader market would be to incorporate into the Sandton node surrounding areas such as Rivonia and Houghton/Killarney. The Commission has submitted that that will not increase the market shares substantially since current market shares are low. It was stated that broadening the market will even dilute the market shares. See page 5 of the Commission's recommendations.

Public Interest

- 13.1.1. The parties have submitted that this transaction has no effect on employment since the business of Equity Estates will be transferred to MRX along with all employees of Equity Estates who will continue to be employed by MRX on the same terms and conditions as those of their employment with Equity Estates.
- 13.1.2. There are no public interest issues that may raise serious competition concerns.

Conclusion

- 14. We conclude that the merger will not lead to a substantial lessening or prevention of competition.

Y. Carrim

19 May 2006
Date

Concurring: D Lewis and M Holden

For the merging parties:	Gareth Driver and Craig Roelofs, Werksmans Attorneys
For the Commission:	Leonard Lamola and Seema Nankoo