**6 September 2016**

**Tribunal imposes Media24 a Credit Guarantee Remedy following a finding it forced out a competitor**

The Competition Tribunal today (6 September 2016) issued its finding on remedies to address the harm done by Media24 through its predatory pricing strategy in the Goldfield’s area which includes giving publications in the area 90 days credit to pay for printing and distribution, instead of having to pay upfront as was the previous practice.

Last year Media24 was found by the Competition Tribunal to have contravened section 8(c) of the Competition Act by engaging in a predatory pricing strategy to drive a rival community newspaper publication, called Gold Net news (GNN) out of the market in the Welkom area, for the period 2004 to 2009. It was the first time in the Tribunal’s 16 year history that it made a predatory pricing finding against a firm. At that time at the request of the parties no remedy was imposed and this was left to a later hearing held in April of this year.

In its decision last year, the Tribunal had found that Media24 had engaged in a predatory pricing strategy which involved Media24 using a title Forum, as a “fighting brand” to prevent GNN from expanding in the market because it was seen as a threat to the rates of its main title, Vista. The Tribunal found that Media 24 had continued to operate Forum, despite the fact it was continually loss making and that its rates were below its average total costs. GNN finally exited the market in 2009. Ten months later Media 24 closed down Forum. At the time it meant that, Vista, a Media24 publication, was the only local paper in the Welkom area.

In its reasons on the remedies issued today, the Tribunal explained why it could not impose a penalty on Media 24. The section of the Act it had contravened does not permit the Tribunal to impose a penalty for a first time contravention.

The Tribunal explained that this did not mean that it could not impose other non-penalty remedies.

There was no dispute that the Tribunal could impose a declaratory remedy declaring the Media 24 had due to its pricing conduct contravened section 8(c) of the Act for the period January 2004 to February 2009. The declaratory order means that if Media 24 contravenes this section again a penalty can be imposed on it. Secondly, any person who has suffered damages as a result of the conduct can approach a civil court to claim damages.

The Tribunal next had to consider whether it should impose any additional remedy beyond the declaratory order.

It concluded that, after examining the evidence, contrary to Media 24 claims otherwise, competition had not been restored to the market. This meant a remedy to restore the lost competition was required.

To this end, the Commission, had proposed that the Tribunal impose a remedy requiring Media 24 to fund the entrance of a new entrant. The Commission suggested that this figure should be in the region of R 10 million.

Media 24 opposed this suggestion as it argued it constituted the imposition of a penalty.

The Tribunal decided not to impose a funding remedy on the basis that it was uncertain if it would be successful in restoring competition as it was limited to a single publication.

Instead the Tribunal imposed what it termed a credit guarantee remedy.

The Credit Guarantee Remedy allows current or new publications within the Goldfields area to approach Media24 for specific credit terms with a distribution and printing company that are part of the Media 24 and its parent company Naspers group of companies.

Media 24 will guarantee the credit of any community newspaper in the Goldfields area that meets the criteria set out in the order for a period of 90 days. These companies are On the Dot a distribution company that distributes in the Goldfields area and Paarl Coldset a printing company based in Bloemfontein.

The rationale for the remedy is to allow smaller publications to get printing and distribution done on credit while they wait to collect their advertising revenue. At present such publications are required to pay for printing and distribution upfront before they have been paid for advertising which gives them a cash flow problem. The remedy seeks to lower barriers to entry to smaller publications by helping their cash flow problems.

Any publication in the area that meets the criteria can take up the offer provided it does so in the next two years. The credit guarantee if taken up operates for three years provided a publication does not default.