



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CO207Mar21**

In the matter between:

The Competition Commission

**Applicant**

And

Adreach (Pty) Ltd

**Respondent**

Panel : E Daniels (Presiding Member)  
: Y Carrim (Tribunal Member)  
: H Cheadle (Tribunal Member)

Heard on : 24 March 2021

Decided on : 24 March 2021

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**CONSENT AGREEMENT**

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Adreach (Pty) Ltd annexed hereto marked "A".

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**Presiding Member  
Mr Enver Daniels**

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**24 March 2021  
Date**

**Concurring: Ms Yasmin Carrim and Prof. Halton Cheadle**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

**(HELD IN PRETORIA)**

**CT Case No.**

**CC Case No: 2018Sep0066**

**2018Sep0067**

In the matter between

**COMPETITION COMMISSION**

**APPLICANT**

and

**ADREACH (PTY) LTD**

**RESPONDENT**

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**CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND ADREACH (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i) AND (ii) OF THE COMPETITION ACT, 1998**

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The Competition Commission and Adreach (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b)(i) and (ii) of the Act, on the terms set out below.




**1. DEFINITIONS**

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1. **"Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.2. **"out-of-home advertising Services"** means out of home advertising that includes the placing of advertisement on street poles, shopping mall poles, billboards, litter bins, bus shelters and other outside furniture;
- 1.3. **"Rate Card"** means the monthly rate at which the rentals for the street pole for the display of advertising has been marketed;
- 1.4. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.5. **"Commlssloner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6. **"Complaint"** means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case numbers 2018Sep0066 and 2018Sep0067;



- 1.7. **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Adreach (Pty) Ltd;
- 1.8. **"Adreach"** means Adreach (Pty) Ltd, a company duly registered and incorporated under the laws of South Africa with its principal place of business at Adreach House, 11 Enterprise Close, Linbro Business Park, Marlboro Gardens, Johannesburg;
- 1.9. **"Qualifying SMMEs"** means SMMEs with a total annual turnover not exceeding R5 million;
- 1.10. **"Provantage"** means Provantage (Pty) Ltd, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business situated at 23 Republiek Road, Bordeaux, Randburg including its subsidiaries being, Kwaito Trading Company (Pty) Ltd t/a Media Book and Outdoor Network Ltd;
- 1.11. **"Parties"** means the Commission and Adreach (Pty) Ltd;
- 1.12. **"Respondents"** means Sotobe Media Holdings (Pty) Ltd, Sotobe Outdoor (Pty) Ltd, Adreach (Pty) Ltd, Kwaito Trading Company (Pty) Ltd t/a Media Book and Outdoor Network Ltd;
- 1.13. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body



established in terms of section 26 of the Act, with its principal place of business at 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

## **2. THE COMMISSION'S INVESTIGATION AND FINDINGS**

2.1. On 18 September 2018, the Commissioner initiated two complaints in terms of section 49(B)(1) of the Act, one against Outdoor Network (Pty) Ltd ("Outdoor Network"), Adreach (Pty) Ltd ("Adreach") and Sotobe Media Holdings (Pty) Ltd ("Sotobe Media"). The other complaint was against Kwaito Trading Company (Pty) Ltd t/a Media Book ("Media Book") and Sotobe Outdoor (Pty) Ltd ("Sotobe Outdoor"). These complaints were investigated under case numbers: 2018Sep0066 and 2018Sep0067. Sotobe Outdoor is a joint venture between Adreach and Sotobe Media.

2.2. Sotobe Outdoor is now known as Masakhe Media (Pty) Ltd ("Masakhe Media") and became a wholly owned subsidiary of Adreach since 31 August 2015.

2.3. Media Book and Outdoor Network are wholly owned subsidiaries of Autumn Storm Investments (Pty) Ltd ("Autumn Storm"). Autumn Storm was acquired by Provantage (Pty) Ltd ("Provantage"). Provantage acquired Outdoor Network and Media Book by virtue of its acquisition of Autumn Storm on 1 January 2017.



2.4. The Respondents entered into an agreement and / or engaged in a concerted practice to fix prices and divide markets by allocating customers in the market for the provision of out-of-home advertising services. Out-of-home advertising includes advertising the products of third parties on street poles, shopping mall poles, billboards, and litter bins, etcetera. This conduct contravenes section 4(1)(b)(i) and (ii) of the Act.

2.5. On 22 September 2020, the Commissioner amended the initiation under case number 2018Sep0067 to include the fixing of rate cards for selling advertising space on street poles in eThekwini, Msunduzi, uMhlathuze, Emnambithi, Umdoni and Mbombela municipalities.

2.6. The Commission's investigation revealed the following:

2.6.1. Outdoor Network, Adreach and Sotobe Media agreed to share equally the market for street pole and shopping mall pole advertising in the municipalities of eThekwini, Msunduzi, uMhlathuze, Emnambithi, Umdoni and Mbombela. This agreement came into existence in October 2013 and has persisted between the parties until February 2020.

2.6.2. The Respondents also agreed not to approach each other's existing customers unless the consent of the other is obtained.

2.6.3. The Respondents further agreed to adhere to the same rate card when selling advertising space on street poles in the eThekwini,



Msunduzi, uMhlathuze, Emnambithi, Umdoni and Mbombela municipalities.

2.6.4. These agreements are recorded in the Memorandum of Understanding concluded between Outdoor Network, Adreach and Sotobe Media and the Media Sales Services Agreement concluded between the same firms under the names Media Book and Sotobe Outdoor.

2.7. This conduct amounts to contravention of section 4(1)(b)(i) and (ii) of the Act.

### **3. ADMISSION OF LIABILITY**

Adreach admits that it engaged in the practices set out in clause 2 above in contravention of section 4(1)(b)(i) and (ii) of the Act.

### **4. CO-OPERATION**

Insofar as the Commission is aware, Adreach:

4.1. has provided the Commission with truthful and timely disclosure, including information in its possession or under its control, relating to the prohibited practice;

4.2. has provided full and expeditious co-operation to the Commission concerning



**the prohibited practice;**

**4.3. has ceased to engage in the prohibited practice. In February 2020, Adreach informed Provantage that they are ending all the relationship with Provantage thereby bringing to an end their anticompetitive conduct;**

**4.4. has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practice; and**

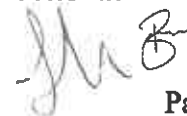
**4.5. has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.**

## **5. FUTURE CONDUCT**

**Adreach agrees and undertakes to:**

**5.1. provide the Commission with full and expeditious co-operation from the time the Consent Agreement is concluded until the subsequent proceedings in the Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:**

**5.1.1. the extent that it is in existence and has not yet been provided, providing evidence, written or otherwise, which is in its possession or under its control, concerning the contraventions in this Consent**





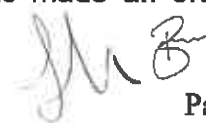
**Agreement; and availing its employees to testify as witnesses for the Commission in any cases regarding the contraventions contained in this Consent Agreement;**

- 5.1.2. prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;**
- 5.1.3. refrain from engaging in price fixing or fixing of trading conditions in contravention of section 4(1)(b)(i) and (ii) of the Act, and from engaging in any prohibited practice in future;**
- 5.1.4. develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;**
- 5.1.5. submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal;**

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## **6. ADMINISTRATIVE PENALTY**

- 6.1. Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, Adreach is liable to pay an administrative penalty.
- 6.2. Adreach agrees and undertakes to pay an administrative penalty in the amount of **R 2 500 000 (Two million five hundred thousand rand)**. This amount does not exceed 10% of Adreach's annual turnover for the financial year ended 31 August 2020.
- 6.3. Adreach will pay the amount of the administrative penalty set out in paragraph 6.2 above to the Commission over a period of 24 months in 2 (Two) equal instalments. The first instalment of **R1 250 000 (One million two hundred and fifty thousand rands)** shall be paid to the Commission within 30 (thirty) days from the date of confirmation of this Consent Agreement as an order of the Tribunal. Thereafter, the remaining **R1 250 000** will be payable in two equal instalments of **R625 000.00**, the first instalment of **R625 000.00** being due on the anniversary of the confirmation of the Consent Agreement as an order of the Tribunal and final instalment being due on second anniversary of the confirmation of the Consent Agreement as an order of the Tribunal.
- 6.4. No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the



Tribunal. Thereafter interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 7%.

- 6.5. The payments shall be made into the Commission's bank account, details of which are as follows:

<b>Bank name:</b>	<b>Absa Bank</b>
<b>Branch name:</b>	<b>Pretoria</b>
<b>Account holder:</b>	<b>Competition Commission Fees Account</b>
<b>Account number:</b>	<b>4087641778</b>
<b>Account type:</b>	<b>Current Account</b>
<b>Branch Code:</b>	<b>632005</b>
<b>Reference:</b>	<b>Case no: 2018Sep0066 &amp; 2018Sep0067/Adreach</b>

- 6.6. The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

## **7. OTHER REMEDIES**

- 7.1. Adreach has also agreed and undertaken to provide free advertising campaigns to the qualifying SMMEs, in the amount of **R1 790 901.44 (One million seven hundred and ninety thousand nine hundred and one rand**



**and forty-four cents) over a period of 12 months. Qualifying SMMEs will be those enterprises with an annual turnover not exceeding 5 million.**

**7.1. Adreach shall make an offer to 58 qualifying SMMEs who will be required to accept this offer at no cost. A list of this qualifying SMMEs will be prepared and provided to the Commission. Each of the qualifying SMMEs will be entitled to 1 (One) advertising campaign during the 12 months period.**

**7.2. Adreach proposes that the free advertising campaign will be settled in a following manner:**

**7.2.1. Each adverting campaign will run for a period of 3 months.**

**7.2.2. The advertising campaign will be comprised of a minimum of 9 advertisements, each of which would be flighted on a separate street poles.**

**7.2.3. Adreach shall ensure that the advertising campaigns are flighted with the purpose of reaching the qualifying SMMEs target market.**

**7.2.4. the campaign will include the design, printing and flighting of the offerees' advertisement.**

**7.2.5. the cost of the advertisement will be at Adreach's current rate card which is on average R30 690.**

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## **8. MONITORING**

### **8.1. Adreach's Undertakes to:**

**8.1.1. Provide the Commission with the details of the qualifying SMMEs who have taken up the offer.**

**8.1.2. Notify the Commission of the campaigns offered to qualifying SMMEs and the rand value for such campaigns.**

**8.1.3. provide confirmation of the flighting of the advertising campaigns to the Commission on a monthly basis for the duration of the 12 months.**

**8.1.4. provide such other information as the Commission may reasonably require in relation to the advertising campaigns.**

### **8.2. ADreach shall, in addition:**

**8.2.1. at all times maintain an up to date register, which shall be available for inspection by the Commission;**

**8.2.2. submit a monthly report in respect of each campaign which has been flighted which will include: the details of the qualifying SMME, copies**



of the advertisements comprising the campaign and the number of advertisements flighted.

- 8.3. The Commission shall have the right to request any information that it determines as being necessary from ADreach in relation to any aspect of the advertising campaigns.

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**9. FULL AND FINAL SETTLEMENT**

This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. **2018Sep0066** and **2018Sep0067** and concludes all proceedings between the Commission, Adreach and its wholly owned subsidiary, Masakhe Media, relating to the conduct that is the subject of the Commission's investigation as described in clause 2 above.

**For Adreach (Pty) Ltd**

Dated and signed at Johannesburg on the 25 day of February 2021



**Chief Executive Officer**

Name In Full: Lutz Walter Drews

**For the Commission**

Dated and signed at PRBTORIA on the 25<sup>TH</sup> day of FEBRUARY 2021



**TEMBINKOSI BONAKELE  
COMMISSIONER**

