



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO077Sep21

In the matter between:

The Competition Commission of South Africa

Applicant

And

Tractor Outdoor (Pty) Ltd

Respondent

Panel: E Daniels (Presiding Member)
F Tregenna (Tribunal Member)
I Valodia (Tribunal Member)

Addendum filed on: 11 October 2021

Heard on: 18 October 2021

Decided on: 18 October 2021

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Tractor Outdoor (Pty) Ltd; including the addendum to the agreement of 16 September 2021, as annexed hereto.

**Presiding Member
Mr Enver Daniels**

**18 October 2021
Date**

Concurring: Prof. Fiona Tregenna and Prof. Imraan Valodia

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

RECEIVED

By Themba Chauke at 12:13 pm, Sep 16, 2021

CT Case No.

CC Case No: 2020JUN0048

In the matter between

COMPETITION COMMISSION

APPLICANT

and

TRACTOR OUTDOOR (PTY) LTD

FIRST RESPONDENT

RELATIV MEDIA (PTY) LTD

SECOND RESPONDENT

INSIGHT OUTDOOR (PTY) LTD

THIRD RESPONDENT

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 TRACTOR OUTDOOR (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT 89 OF 1998


AS

The Competition Commission ("Commission") and Tractor Outdoor (Pty) Ltd ("Tractor") 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)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of a contravention of section 4(1)(b)(i) 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 digital advertising services"** means out of home advertising that entails the placing of advertisement for display on digital screens;
- 1.3. **"Rate Card"** means the monthly rate at which the rentals for placing or displaying of advertisement on a digital screen has been marketed and sold;
- 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. **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6. **"Complaint"** means the complaint submitted by Primedia Outdoor (Pty) Ltd on 22 June 2020 and investigated by the Commission under case number 2020Jun0048;
- 1.7. **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Tractor;
- 1.8. **"Tractor"** means Tractor Outdoor (Pty) Ltd, a private company duly registered and incorporated in accordance with the laws of the Republic of South Africa with its principal place of business situated at 28 Wesley Street, Observatory, Cape Town;
- 1.9. **"Relativ"** means Relativ Media (Pty) Ltd, a private company duly registered and incorporated in accordance with laws of the Republic of South Africa with its principal place of business situated at 118 4th Street, Parkmore, Sandton.
- 1.10. **"Insight"** means Insight Outdoor (Pty) Ltd , a private company duly registered and incorporated in accordance with laws of the Republic of South Africa with its principal place of business situated at 5 Viceroy Link, Irene Road, Pretoria.
- 1.11. **"Parties"** means the Commission and Tractor;

1.12. “**Respondents**” means Tractor; Relativ and Insight;

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 22 June 2020, Primedia Outdoor (Pty) Ltd (“Primedia Outdoor”) submitted a complaint against Tractor Outdoor (Pty) Ltd (“Tractor”); Relativ Media (Pty) Ltd (“Relativ”) and Insight Outdoor (Pty) Ltd (“Insight”), collectively referred to as (“the respondents”). This complaint was investigated under case number: **2020Jun0048.**

2.2. The Respondents are independent media owners who *inter alia* provide outdoor digital advertising services. Outdoor digital advertising services includes placing advertisements for display on digital screens.

2.3. The Commission’s investigation revealed the following:

2.3.1. The Respondents agreed and/or engaged in a concerted practice to fix the advertising rate card for marketing and selling of digital advertising slots to customers on the digital screens.



2.3.2. In and around March 2020, the Respondents concluded a Memorandum of Understanding (“MoU”) in terms of which they each contributed certain ‘slots’ on certain of their digital advertising screens into one pool, comprising 19 (3mx6m) digital screens and housed them under an unincorporated joint venture to operate under the name of ‘United Network’ (the “unincorporated JV”). The unincorporated JV was intended to be used by the Respondents to pool slots on these digital advertising screens in order to collectively market and sell the placing of outdoor adverts along the highways in various parts of Gauteng.

2.3.3. The MoU of the unincorporated JV contained the price fixing agreement between the Respondents in that it fixed the rate card for advertising slots contributed by each Respondent at R10 000.00 per digital screen (the first sales in accordance with the agreement were only made pursuant to the establishment of Andocan, as set out below).

2.3.4. On 17 July 2020 the Respondents formalised the activities of the unincorporated JV into an incorporated company called Andocan (Pty) Ltd (“Andocan”). Each Respondent nominated one director into Andocan.

2.3.5. Andocan thereafter charged advertisers (customers) the same



R10 000.00 rate for one advertising slot of 3 minute loop, per screen, per month that was previously set by the Respondents in terms of the MOU.

2.3.6. The fixing of the digital advertising rates amongst the Respondents described above constitutes price fixing in contravention of section 4(1)(b)(i) of the Act.

3. ADMISSION OF LIABILITY

3.1. Tractor does not admit liability in respect of the conduct described in paragraph 2 above.

4. AGREEMENT REGARDING FUTURE CONDUCT

Tractor agrees and undertakes to:

4.1. Refrain from engaging in price fixing or fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act, and from engaging in any prohibited practice in future;

4.2. Unilaterally or independently, and without any agreement or alignment between any or all the Andocan joint venture participants, determine the prices at which it markets and sells advertising slots on the digital screens allocated to the Andocan joint venture. Such prices will be determined based on,



amongst other things / factors, Tractor's particular cost structure, discounts offered and required margins.

- 4.3. Prepare and circulate a statement summarizing the content of this agreement to all management and operational staff employed by Tractor and Andocan within 30 (thirty) days from the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 4.4. Develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its management and operational staff 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. ADMINISTRATIVE PENALTY

- 5.1. Tractor agrees and undertakes to pay an administrative penalty in the amount of R38,585.10 (**Thirty-Eight thousand rand five hundred and eighty five rand ten cents**). This amount does not exceed 10% of Tractor's annual turnover derived from/through Andocan for the financial year ended 28 February 2021.
- 5.2. Tractor will pay the administrative penalty set out in paragraph 5.1 above to the Commission within 30 (Thirty) days of the confirmation of the Consent



Agreement as an order of the Tribunal.

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

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4087641778
Account type:	Current Account
Branch Code:	632005
Reference:	Case no: 2020Jun0048/Tractor

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

6. MONITORING

- 6.1. Submit to the Commission within 60 (sixty) days from date of confirmation of the Consent Agreement by the Tribunal a copy of written agreement between the Respondents which records that each shall negotiate its digital advertising rate card individually in respect of slots on digital signs made available by them to / through Andocan.

- 6.2. Submit to the Commission a report demonstrating that Tractor determined its



prices independently. The information contained in this report shall contain but not be limited to Tractor's annual rate card (including changes thereto from time to time), discounts offered and margins derived over time. The report shall be submitted to the Commission on the first anniversary of the confirmation of this Consent Agreement by the Tribunal and will continue to do so annually for as long Tractor remains part of the Andocan joint venture.

- 6.3. The obligation under paragraph 6.2 will come to an end upon Tractor ceasing to be part of Andocan joint venture whereupon Tractor shall provide the Commission with a 'close out report'.
- 6.4. Notwithstanding paragraph 6.2 above the Commission may require production of the report mentioned in 6.2 from Tractor at any time within a reasonable period of no more than 60 (sixty) business days.
- 6.5. All reports in relation to conditions set out in this agreement, including but not limited to compliance programmes, proof of payment(s) etc. shall be submitted to the Commission at CartelSettlements@compcom.co.za.

7. 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. **2020Jun0048** and concludes all proceedings between the Commission and the Tractor relating to the conduct that is the subject of the Commission's investigation as



described in clause 2 above.

For Tractor Outdoor (Pty) Ltd

Dated and signed at Craighall **on the** 2nd **day of** September **2021**

Stevens

Chief Executive Officer
Financial

Name in Full: Andrew Stevens

For the Commission

Dated and signed at PRETORIA **on the** 06 **day of** SEPTEMBER **2021**



TEMBINKOSI BONAKELE

COMMISSIONER

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CT Case No: CO077Sep21

CC Case No: 2020Jun0048

In the matter between

COMPETITION COMMISSION

APPLICANT

and

TRACTOR OUTDOOR (PTY) LTD

RESPONDENT

**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND TRACTOR OUTDOOR (PTY) LTD DATED 02
SEPTEMBER 2021.**

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and Tractor Outdoor (Pty) Ltd ("Tractor Outdoor"), filed on 16 September 2021 for confirmation by the Competition Tribunal, be supplemented as recorded below.

1. INSERTING PARAGRAPH 3.2 TO READ AS FOLLOWS:

- 3.2. The Commission decided not to insist on an admission of liability based on, amongst others, the following:



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AS

- 3.2.1 The Respondents take the position that the Andocan joint venture is pro-competitive in that it enables them as small firms to effectively compete in the digital advertising market and, in their view / according to their submissions, was undertaken: (i) with the pro-competitive intention of attaining the scale required to compete with significantly larger incumbent firms operating in the market; (ii) in an endeavour to provide advertisers / customers with a convenient and cost-effective product; and (iii) without having lessened or prevented competition amongst them (outside of the Andocan joint venture). The Commission, on the other hand, holds the view that the purpose of the Andocan joint venture can still be achieved without the fixing of the digital advertising rate cards.
- 3.2.2 Given that the matter raises a complex legal issue of the legitimacy of the joint venture, the outcome of its trial before the Tribunal is thus not a foregone conclusion.
- 3.2.3 The Commission deemed it efficient to resolve this matter by correcting the conduct in the market rather than expending its limited resources on litigation.
- 3.2.4 The conduct that is the subject of the Consent Agreement was in place for a relatively short period of 10 (ten) months, was relatively limited in its scope (the conduct only implicated 13 unique advertising campaigns), and was suspended by the Respondents pending the Commission's investigation.

3.2.5 Tractor Outdoor has not been found guilty of contravening the Competition Act.

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning ascribed to them in the Consent Agreement.

For Tractor Outdoor (Pty) Ltd

Dated and signed at Illovo on the 5th day of October **2021**.

Stevens

Chief Financial Officer

Name in Full: Andrew Stevens

For the Commission

Dated and signed at PRETORIA on the 11 day of OCTOBER **2021**.



TEMBINKOSI BONAKELE

COMMISSIONER