



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR294Feb18/SA001Apr18

In the matter between:

The Competition Commission

Applicant

And

MTV Networks Africa (Pty) Ltd

Respondent

Panel : E Daniels (Presiding Member)
M Mokuena (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 25 April 2018

Decided on : 25 April 2018

Settlement Agreement

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

**Presiding Member
Mr Enver Daniels**

25 April 2018
Date

Concurring: Mrs Medi Mokuena and Prof. Fiona Tregenna

Annexure 'A'

CR294Feb18/SA001Apr18



competitiontribunal south africa

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Form continues on Page 2.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctea@comtrib.co.za

Referral of Complaint by Commission

Date: 03 April 2018

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

MTV Networks Africa (Pty) Ltd

Concerning:

(Complaint name and Commission file number:)

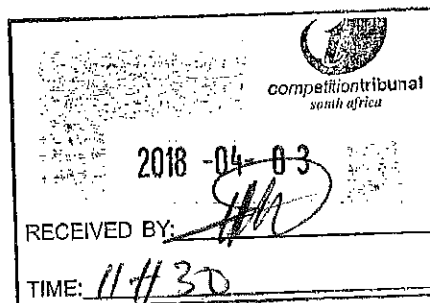
2011NOV5779 & 2015DEC0695 & 2017OCT0028

From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(i) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

Confirmation of the attached consent agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 59(1)(b) of the Competition Act 1998 (Act 89 of 1998) as amended ("The Act") in respect of a contravention of section 4(1)(b) of the Act.





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Contacting the Tribunal

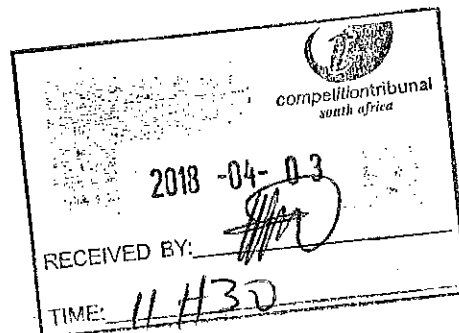
The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctcc@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

Confirmation of the attached consent agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act 1998 (Act 89 of 1998) as amended ("the Act") in respect of a contravention of section 4(1)(b) (i) (ii) & (iii) of the Act.



☒ This referral is to proceed as a consent proceeding.

☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

BUKHOSIBAKHE MAJENGE: CHIEF LEGAL COUNSEL

Authorised Signature:

[Signature]

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CR294 Feb 18 / SA001 Apr 18

CT Case No.

CC Case No. 2011Nov5779 / 2015Dec0695

In the matters between:

In re

CC Case No's: 2011Nov5779 and 2015Dec0695

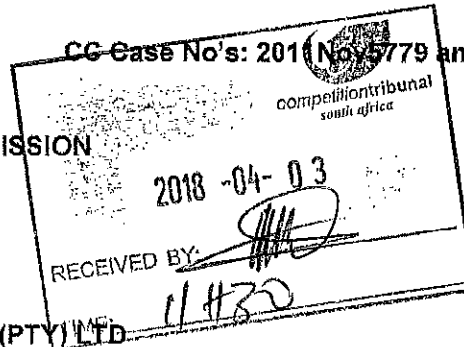
THE COMPETITION COMMISSION

APPLICANT

and

MTV NETWORKS AFRICA (PTY) LTD

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 MTV NETWORKS AFRICA (PTY) LTD IN RESPECT OF A CONTRAVENTION OF SECTIONS 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998

The Competition Commission and MTV Networks Africa (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 as read with Sections 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) 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 **"Accredited Media Agents"** means advertising agents endorsed by MCC through Corex and have provided security to MCC. MCC holds securities for its members (media owners) on behalf of an accredited media agency.
- 1.3 **"Black People"** bears the same meaning as that set out in section 1 of the Broad Based Black Economic Empowerment Act 53 of 2003 as amended;
- 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 **"Complaints"** means the complaints initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case numbers 2011Nov5779 and 2015Dec0695;
- 1.7 **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and MTV Networks Africa (Pty) Ltd;
- 1.8 **"CoreX"** means Corexalance, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Building A, Office 103, Cresta Junction, Cnr of Beyers Naude and Judges Street, Cresta, Gauteng;
- 1.9 **"Economic Development Fund"** means the fund referred to in paragraph 7.2 below;

- 1.10 **"Economic Development Fund Manager"** means Media Development And Diversity Agency;
- 1.11 **"MDDA"** means Media Development and Diversity Agency, a juristic person established in terms of section 2 of the Media Development and Diversity Agency Act no 14 of 2002, as amended, with its principal place business address at 1st Floor, 5 St Davids Place, Parktown, Johannesburg, Gauteng;
- 1.12 **"MCC"** means the Media Credit Co-ordinators, a non-profit company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Building A, Office 103, Cresta Junction, Cnr of Beyers Naude and Judges Street, Cresta, Gauteng;
- 1.13 **"MCC Members"** means media owners that have subscribed with MCC and are active in the provision of advertising space;
- 1.14 **"MTV"** means MTV Networks Africa (Pty) Ltd, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Ground Floor, Block 1B, 1 Saxon Road, Hyde Park, Johannesburg;
- 1.15 **"Qualifying Small Agencies"** means those agencies which meet the criteria set out in the Broad Based Black Economic Empowerment Act 53 of 2003 and the codes of good practice issued thereunder;
- 1.16 **"Small Agencies"** means media or media related agencies or organisations with a turnover not exceeding R50 000 000 (fifty million rand) and which are majority owned by Black People;

- 1.17 **"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 INVESTIGATIONS AND FINDINGS

- 2.1 In November 2011, the Commission initiated a complaint in terms of section 49(B)(1) of the Act (under case number 2011Nov5779) against Avusa Media Limited (**"Avusa"**), Caxton Community Newspapers Limited (**"Caxtons"**), Independent Newspapers Proprietary Limited (**"Independent News"**), Media24 Limited (**"Media 24"**), Radmark Proprietary Limited (collectively, the "respondents") and MCC.
- 2.2 In December 2015 (under case number 2015Dec0695) the Commission expanded the initial complaint to include 24 additional respondents.
- 2.3 The allegations against the respondents are that:
- 2.3.1 through the medium of the MCC, the respondents agreed to offer similar discounts and payment terms to advertising agencies that place advertisements with MCC members. For accredited agencies, the discount offered is 16.5% for all payments made within 45 days of the date of the statement while for the most part the discount offered to non-accredited agencies is 15% for payments made within the same period.
- 2.3.2 The respondents also agreed to charge a 50% cancellation fee in

respect of all adverts that the advertising agencies withdraw 24 hours before publication.

2.3.3 The respondents as members of the MCC employ services of an intermediary company called Corex to perform the risk assessment on advertising agencies for purposes of imposing the above settlement discount structure and terms on advertising agencies.

2.3.4 The Commission found that the above mentioned practices by the respondents gave rise to a restriction of competition amongst competing respondents in that they did not independently determine an element of a price in the form of discount or trading terms. These practices amount to price fixing and the fixing of trading conditions in contraventions of section 4(1)(b)(i) of the Act.

3. ADMISSION OF LIABILITY

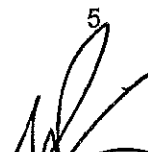
MTV admits that it engaged in the prohibited practices set out in clause 2 above in contravention of sections 4(1)(b)(i) of the Act.

4. CO-OPERATION

Insofar as the Commission is aware, MTV:

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

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

5


concerning the prohibited practices;

- 4.3 has ceased to engage in the prohibited practices and has also ceased to be a member of the MCC;
- 4.4 has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practices; 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

MTV 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 to 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

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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 conduct which contravenes section 4(1)(b) 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;
- 5.1.6 actively endeavour to put in place measures to facilitate the ability of Small Agencies to transact with MTV, as set out in paragraph 7 of this Consent Agreement.

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, MTV is liable to pay an administrative penalty.

6.2 MTV agrees and undertakes to pay an administrative penalty in the amount of **R 966,692.83 (nine hundred and sixty-six thousand, six hundred and ninety-two rand and eighty-three cents)** which does not exceed 10% (ten percent) of MTV's annual turnover in the Republic of South Africa for its financial year ended 2016.

6.3 The first payment shall be made within 30 (thirty) days of the confirmation of the Consent Agreement as an order of the Tribunal.

6.4 The administrative penalty shall be paid into the Commission's bank account, details of which are as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345

Ref: 2015Dec0695/MTV

6.5 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 SMALL AGENCY PARTICIPATION

 8

- 7.1.1 In order to facilitate the ability of Qualifying Small Agencies to transact with MTV, MTV will obtain its own credit insurance so that the agencies are not required to commit any securities or guarantees in order to book airtime and / or advertising space;
- 7.1.2 Further, MTV undertakes to provide 25% (twenty five percent) in bonus airtime and/or advertising space for every Rand of advertising space bought by all Qualifying Small Agencies. The bonus airtime and/or advertising space will be utilised at times scheduled at the discretion of MTV, which discretion shall be reasonably exercised, taking into account the airtime and/or advertising space package purchased, the target audience and advertising requirements of the clients of Qualifying Small Agencies. MTV will offer these terms for a period of 3 (three) years from the date of confirmation of this Consent Agreement, subject to a total annual advertising space cap of R16 000 000 (sixteen million rand).
- 7.1.3 MTV undertakes to publish the terms in paragraph 7.1 of the Consent Agreement using national media that has a reach to Qualifying Small Agencies within 10 (ten) business days from the date of confirmation of this Consent Agreement as an order of the Tribunal, inviting all Qualifying Small Agencies to participate. MTV will thereafter publish these terms every year on the anniversary of the first publication for a period of 3 (three) years.



9

7.1.4 MTV undertakes to provide the Commission with a written report in respect of the utilisation of the 25% bonus airtime and/or advertising space by Qualifying Small Agencies. Such report shall include information on the number of Qualifying Small Agencies who have utilised the bonus airtime and/or advertising space, as well as the names, contact details and the Rand value of the bonus advertising space received by each Qualifying Small Agency.

7.1.5 MTV shall submit such report 1 (one) month after every 6 (six) month period from the date of confirmation of this Consent Agreement, for a period of 3 (three) years.

7.2 ECONOMIC DEVELOPMENT FUND

7.2.1 MTV and its subsidiaries undertakes to contribute an amount of **R 348 009.42 (three hundred and forty-eight thousand and nine rand and forty-two cents)** over a period of 3 (three) years from the date of confirmation of this Consent Agreement to the Economic Development Fund to enable the development of Qualifying Beneficiaries.

7.2.2 MTV undertakes to make 3 (three) equal contributions of **R116 003.14 (one hundred and sixteen thousand and three rand and fourteen cents)** into the Economic Development Fund. The first contribution is payable within 3 (three) months from the date of

confirmation of this Consent Agreement and thereafter make the second and third contributions at the anniversary of the first.

7.2.3 These contributions shall be made into an account created and managed by MDDA.

7.2.4 The Qualifying Beneficiaries are Black People and include the following:

7.2.4.1 students requiring bursaries to study media or advertising qualifications at tertiary institutions;

7.2.4.2 individuals requiring assistance to acquire necessary post-qualifications experience to participate in the advertising industry;

7.2.4.3 individuals requiring assistance with sponsorship for mentoring or training in areas of media and/or advertising business fundamentals including working capital management, capitalisation and HR processes;

7.2.4.4 black owned small media or advertising agencies requiring assistance with start-up capital;

7.2.5 The Economic Development Fund will be managed and administered by the MDDA and will be subject to annual audits by an auditing firm. MDDA shall submit an audited report relating to the

management and administration of the activities of the Economic Development Fund to the Commission within 3 months of the completion of the audit.

7.2.6 In addition, the MDDA shall provide the Commission with a written report in respect of the utilisation of the contributions made by MTV to the Economic Development Fund, including the number of Qualifying Beneficiaries who derived benefits from such contributions, as well as the names, contact details and the Rand value of the benefits received by Qualifying Beneficiaries. Such report shall be submitted every 6 (six) months for a period of 3 (three) years.

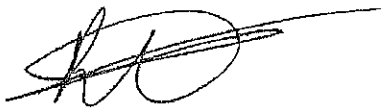
7.2.7 In accordance with clause 4.1 of the MDDA agreement, MDDA shall publish the terms in paragraph 7.2 of this Consent Agreement using national media that has a reach to Qualifying Beneficiaries within 3 (three) months from the date of confirmation of this Consent Agreement as an order of the Tribunal.

8. FULL AND FINAL SETTLEMENT

This agreement is entered into in full and final settlement of all conduct engaged in by MTV with its competitors as set out in paragraph 2 of this Consent Agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and MTV in this regard.

For MTV Networks Africa (Pty) Ltd

Date and signed at HYDE PARK on the 21 day of MARCH 2018.



Name in full: RALPH MKHENDA
Designation: FINANCE DIRECTOR

For the Commission

Date and signed at PRETORIA on the 29th day of MARCH 2018.



TEMBINKOSI BONAKELE
COMMISSIONER

