



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR294Feb18/SA313Mar18

In the matter between:

The Competition Commission

Applicant

And

Media24 Ltd

Respondent

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

Heard on : 25 April 2018
Last Submission : 08 June 2018
Decided on : 18 June 2018

Settlement Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Media24 Limited annexed hereto marked "A" together with the attached addendum annexed "A1".

**Presiding Member
Mr Enver Daniels**

18 June 2018
Date

Concurring: Mrs Medi Mokuena and Prof. Fiona Tregenna

"A"

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

CT CASE NO: CR294Feb18/SA313New
CC CASE NO: 2011NOV5779/ 18
2015DEC0695

In the matter between:

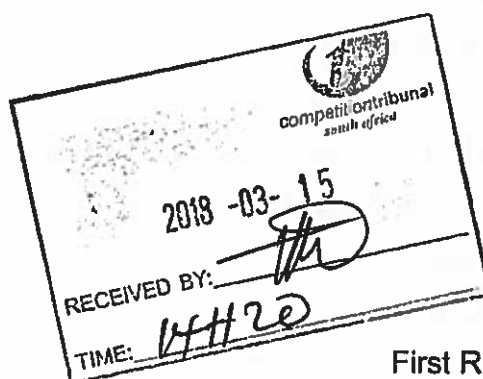
THE COMPETITION COMMISSION

Applicant

And

MEDIA24 LIMITED

First Respondent



FILING SHEET

BE PLEASED TO TAKE NOTICE that the applicant hereby files the consent agreement concluded between the Competition Commission and Media24 Limited.

DATED AT PRETORIA ON THIS 15 DAY OF MARCH 2018

COMPETITION COMMISSION

77 Meintjies Street
The Dti Campus, 3rd Floor
Block C Mulayo Building
Sunnyside, Pretoria

Tel: 012 762 6982

Ref: K MAHLAKOANA/

2011NOV5779/2015DEC0695

Email: kwenam@compcom.co.za

To: THE REGISTRAR
Competition Tribunal
3rd Floor, Mulayo
The DTI Campus
77 Meintjies Street
Sunnyside
Pretoria
Tel: (012) 394-3300/55
Fax: (012) 394-0169
E-mail address: Leratom@comptrib.co.za

And To: WERKSMANS ATTORNEYS
FIRST RESPONDENTS ATTORNEYS
Paul Cleland
150 West Street
Sandton
Johannesburg
2196
Tel: 011 535 8000
Email: pcleland@werksmans.com

CR294Feb18/SA313Mar18



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: 15 March 2018

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)
Media24 Limited

Concerning:

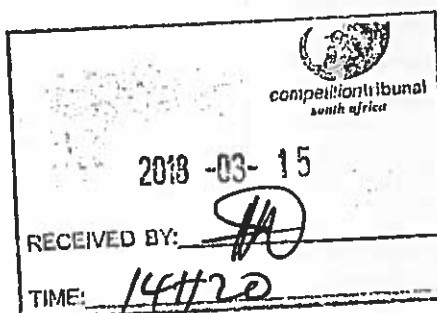
(Complaint name and Commission file number :)
THE COMPETITION COMMISSION
2011NOV5779, 2015DEC0695 & 2017OCT0028

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:)

It is alleged that Media24 Limited and other media owners had an agreement and/or engaged in a concerted practice to offer similar discounts and payment terms to advertising agencies that place advertisements with them. This conduct may amount to price fixing and fixing of trading conditions in contravention of section 4(1)(b)(i) of the Competition Act 89 of 1998, as amended.





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Contacting the Tribunal

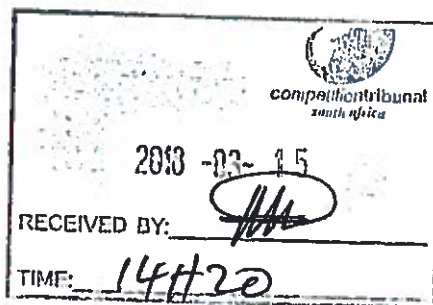
The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169

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 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)(i) 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:

CR294Feb18/SA313Mar18

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

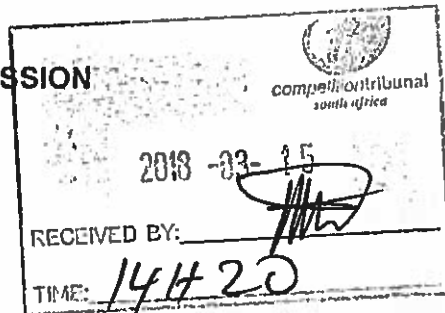
CT Case No.
CC Case No. 2011Nov5779 / 2015Dec0695

In the matter between:

THE COMPETITION COMMISSION

and

MEDIA 24 LIMITED



APPLICANT

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 MEDIA 24 LIMITED IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998

The Competition Commission and Media 24 Limited 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 **"CLP"** means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No.31064 of 23 May 2008);
- 1.5 **"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;
- 1.6 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.7 **"Complaint"** means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case numbers 2011Nov5779 and 2015Dec0695;
- 1.8 **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Media 24 Limited;
- 1.9 **"CoreX"** means Corexalance Proprietary Limited, 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;
- 1.10 **"Economic Development Fund"** means the fund referred to in paragraph

7.2 below;

1.11 "Economic Development Fund Manager" means Media Development and Diversity Agency;

1.12 "Media 24" means Media 24 Limited, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Media 24 Centre, 40 Heerengracht Street, Cape Town, including its subsidiaries being the following entities:

1.12.1 Media 24 (Pty) Ltd

1.12.2 CT Media Publications (Pty) Ltd;

1.12.3 Drendy Investments (Pty) Ltd;

1.12.4 Market Demand trading 113 (Pty) Ltd;

1.12.5 Midlands Media (Pty) Ltd;

1.12.6 Mooivaal Media (Pty) Ltd;

1.12.7 Natal Witness Printing and Publishing Company (Pty) Ltd;

1.12.8 New Media Publishing (Pty) Ltd;

1.12.9 Rodale and Touchline Publishers (Pty) Ltd;

1.12.10 SA Hunt Publishing (Pty) Ltd;

1.12.11 Sky Blue Media (Pty) Ltd;

1.12.12 Tames Communications (Pty) Ltd; and

1.12.13 24.com Online Studios (Pty) Ltd.

- 1.13 "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;
- 1.14 "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;
- 1.15 "MCC Members" means media owners that have subscribed with MCC and are active in the provision of advertising space;
- 1.16 "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;
- 1.17 "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;
- 1.18 "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 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 charge 50% cancellation fee in respect of all adverts that the advertising agencies withdraw 24 hours before publication.

2.3.3 respondents as members of the MCC employ services of an intermediary company called Corex to perform the risk assessments on advertising agencies for purposes of imposing the above

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settlement discount structure and terms on advertising agencies.

- 2.3.3 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

Media 24 admits that it engaged in the practices set out in clause 2 above in contravention of section 4(1)(b) (i) of the Act.

4. CO-OPERATION

Insofar as the Commission is aware, Media 24:

- 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. On 30 April 2016, Media 24 resigned from MCC with immediate effect and without serving any notice period. Further, Media 24 has removed all media agency commission and/or early settlement discounts;

- 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

Media 24 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 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

10/

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 Media24, 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, Media 24 is liable to pay an administrative penalty.
- 6.2 Media 24 agrees and undertakes to pay an administrative penalty in the amount of R13 828 892, 26 (thirteen million eight hundred and twenty eight thousand eight hundred and ninety two rand and twenty six

cents) which does not exceed 10% (ten percent) of Media 24's annual turnover in the Republic of South Africa for the financial year ended 31 March 2016.

6.3 The 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/Media 24

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

7.1.1 In order to facilitate the ability of Qualifying Small Agencies to transact with Media 24, Media 24 will obtain its own credit insurance so that these agencies are not required to commit any securities or

guarantees in order to book airtime and advertising space and / or airtime;

7.1.2 Further, Media24 undertakes to provide 25% (twenty five percent) in bonus airtime for every Rand of airtime bought by all Qualifying Small Agencies. The bonus airtime will be utilised at times scheduled at the discretion of Media24, which discretion shall be reasonably exercised, taking into account the airtime package purchased, the target audience and advertising requirements of the clients of Qualifying Small Agencies. Media24 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 airtime cap of R35 000 000 (thirty five million rand).

7.1.3 Media24 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. Media24 will thereafter publish these terms every year on the anniversary of the first publication for a period of 3 (three) years.

7.1.4 Media24 undertakes to provide the Commission with a written report in respect of the utilisation of the 25% bonus airtime by Qualifying Small Agencies. Such report shall include information on the number

of Qualifying Small Agencies who have utilised the bonus airtime, as well as the names, contact details and the Rand value of the bonus airtime received by each Qualifying Small Agency.

- 7.1.5 Media24 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 Media 24 undertakes to contribute R4 978 401.21 (**Four Million Nine Hundred and Seventy Eight Thousand, Four Hundred and One Rands, Twenty One Cents**) over 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 Media24 undertakes to make 3 (three) equal contributions of **R1 659 467.07 (one million six hundred and fifty nine thousand four hundred and sixty seven and seven 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 MDDA and will be subject to annual audits by an auditing firm. MDDA shall submit 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 Media24 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 Media24 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 Media24 and its subsidiaries in this regard.

For Media24 Limited

Date and signed at CAPE TOWN on the 8TH day of MARCH 2018.

A. May

Name in full: ABDURAGHMAN MAYMAN

Designation: GROUP CEO

For the Commission

Date and signed at Pretoria on the ____ day of 13/03/18 2018



TEMBINKOSI BONAKELE
COMPETITION COMMISSIONER

"A1"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No.
CC Case No. 2011Nov5779 / 2015Dec0695

In the matter between:

THE COMPETITION COMMISSION

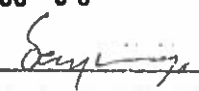


APPLICANT

and

2018 -06- 08

MEDIA 24 LIMITED

RECEIVED BY: 

TIME: 13:41

RESPONDENT

**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND MEDIA 24 LIMITED DATED 13 MARCH 2018**

It is hereby recorded, by agreement between the parties, that the consent agreement concluded between the Competition Commission and Media 24 Limited, signed on 13 March 2018 and presented for confirmation by the Competition Tribunal on 25 April 2018 (the "Consent Agreement"), is amended as set out below.

1. AD PARAGRAPH 7.1 (SMALL AGENCY PARTICIPATION)

The parties wish to amend –

- 1.1 clause 7.1.1 by deleting the reference to *"airtime and advertising space and/or airtime"* in the fourth to fifth lines and substituting it with *"advertising space and/or airtime"*;

- 1.2 clause 7.1.2 by deleting the references to the word "airtime" in the second, third, fifth and ninth lines and substituting them with "advertising space and/or airtime"; and
- 1.3 clause 7.1.4 by deleting the references to the word "airtime" in the second, fourth and sixth lines and substituting them with "advertising space and/or airtime".
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 Media24 Limited

Date and signed at Cape Town on the 23rd day of MAY 2018.



Name in full: SONKEZO RALABALA

Designation: GENERAL COUNSEL

For the Commission

Date and signed at TSHWANE on the 2nd day of June 2018



TEMBINKOSI BONAKELE
COMPETITION COMMISSIONER