COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 92/CR/Oct11

(016204)

In the matter between:

THE COMPETITION COMMISSION	**APPLICANT**
And	
MEDIA24 (PTY) LTD	**RESPONDENT**

Panel:	Norman Manoim (Presiding Member)
	Yasmin Carrim (Tribunal Member)
	Andreas Wessels (Tribunal Member)
Heard on:	18 February 2013 and 08 March 2013
Order issued on:	28 March 2013
Reasons issued on:	28 March 2013

REASONS FOR THE DECISION

Introduction

[1] This is an application by the Competition Commission ("Commission") to amend its complaint referral by way of a supplementary affidavit.

[2] The case concerns allegations of predatory pricing by two publications owned by Media24 (Pty) Ltd ("Media24"), known as Forum and Vista, that both operate in several geographical markets in the Free State known locally as the Goldfields area.

[3] The Respondent, Media24, opposes the application as it contends that the amendment will introduce material into the referral that is excipiable on the basis that it fails to disclose a cause of action, alternatively that it is vague and embarrassing. This decision deals with this argument.

Reason for the application

[4] The application has come late in the history of a case bedevilled by procedural disputes.[1] The complaint was initiated by a complainant on 30 January 2009 and referred to the Tribunal by the Commission on 31 October 2011. Media24 filed an answer to that on 19 January 2012. Ordinarily, that filing would have signalled a close of pleadings. During the period subsequent, the Commission made various applications for discovery that were in some respects contested by Media24. The Commission prevailed in respect of compelling discovery of some documentation, most recently in December 2012. The Commission says that as a result of the newly discovered documents, consultations with new witnesses not previously available to it and consultations with its external economic expert advisors, it is seeking to refocus certain aspects of its case not previously apparent to it at the time of the referral.[2]

[5] Media24 has not seriously disputed the Commission's justification for the amendment, although it alleges it is prejudiced by its late submission. We consider the reasons for the delay have been adequately explained in the context of a case of this complexity. Whilst Media24 is further burdened in its defence by having to respond to a supplementary affidavit, after it has already filed an answer to the complaint referral, it has not persuaded us that this additional burden, is so disproportionate to the efforts it already has to make, in any event, in defending such a case, that it should not be allowed.

[1] See an earlier decision of ours in relation to a summons issued by the Commission in the same matter. (*Media24 Ltd and another v Competition Commission of South Africa and others* [2010] 2 CPLR 418 (CT)). In addition, there have been several disputes over discovery.
[2] See Commission's Application to file supplementary affidavit, paragraph 17. The Commission also says the information it now has was not previously present in the financial data it received from Media24.

[6] Thus we consider the reasons for the lateness of the application have been adequately explained and we go on to consider the merits of the exceptions.

[7] At the outset it is worth recording what is not in dispute. Media24 does not dispute that the Commission is entitled to bring an amendment by way of a supplementary affidavit.[3] The Commission does not dispute that if the supplementary affidavit contains material that is excipiable, a respondent is entitled to object to it being permitted as an amendment.

[8] What is in dispute is whether the 'further particulars', as they are styled by the Commission, are excipiable.

Tribunal's approach to exceptions

[9] The Tribunal has in previous decisions recognised the utility of upholding exceptions in appropriate cases for the same reasons that civil courts do. That being said, there is no reason not to follow the approach adopted by civil courts, which requires that exceptions be based on the facts set out in the complainant's case, which if true would not make out a case in law and secondly that the onus is on the excipient to make out its case.[4]

Background

[10] In 2009, the Commission received a complaint from Berkina Twintig (Pty) Ltd a newspaper publisher, which alleged that its newspaper, Gold-Net News ("GNN"), had been forced to exit the market in the Gold Fields area through the predatory actions of its competitor Media24, which operated the Forum and Vista titles in the area.[5] It is common cause that GNN exited the market in 2009 and Forum exited the market early the following year. Whilst the exits are common cause, the reasons for them are not.

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[3] See *Loungefoam (Pty) Ltd and others v Competition Commission and others; In Re: Feltex Holdings (Pty) Ltd v Competition Commission and others* [2011] 1 CPLR 19 (CAC) at par [16].
[4] *Marney v Watson* 1978 (4) SA (C) at 144, *McKelvey v Cowan N.O.* 1980 (4) SA 525 (Z) at 526 and *South African National Parks v Ras* 2002 (2) SA 537 (C) at 542.
[5] See Commission Application ibid, paragraph 7.

[11] The Commission's case, as set out in the complaint referral, is that the reason GNN exited the market is that it succumbed to a predatory pricing strategy embarked upon by Media24 using Forum as a "fighting brand" which lowered its advertising rates to a predatory level to force its competitor out of the market and having done so, it closed down Forum and continued to operate through the more profitable Vista.[6] The Commission alleges that Media24, the proprietor of both titles, has contravened section 8(d)(iv) alternatively section 8(c) of the Competition Act 89 of 1998, as amended ("Act"). The Commission's supplementary affidavit seeks to add a new element to the section 8(c) case and to explain its approach to costs in respect of the section 8(d)(iv) case.

[12] Section 8(d)(iv) states that a dominant firm may not charge prices that are below its marginal or average variable costs. These two terms are not defined in the Act but they have an orthodox meaning in economics which we explain later.

[13] Section 8(c) is the general exclusionary section. It differs from the sub-paragraphs contained in section 8(d) as it does not refer to specific acts of abuse, but rather refers to acts in general terms that have an exclusionary effect. The sub-sections further differ both in terms of their consequences for the onus of proof and remedies.[7]

[14] For the purpose of deciding the exception, we discuss the case made out under these two sub-sections of the Act separately; first setting out the case made out in the complaint referral and then the case as sought to be amended by the supplementary affidavit.

[6] Media24, whilst acknowledging the closures took place, disputes the Commission's theory of why they closed.

[7] For a more detailed discussion of the comparison see our decisions in *The Competition Commission v South African Airways (Pty) Ltd* [2005] 2 CPLR 303 (CT) and *Competition Commission of South Africa v Senwes Ltd* [2009] 1 CPLR 18 (CT).

The case under section 8(c)

[15] The objections are that the Commission's case discloses no cause of action alternatively that it is vague and embarrassing.

[16] The most significant changes the supplementary affidavit brings about are to this leg of the Commission's case. In the complaint referral, the 8(c) case relates solely to the actions of Forum, the alleged "fighting brand". The case made out there is straight forward - to the extent that the Commission did not meet the more demanding cost threshold set out in section 8(d)((iv) (i.e. below average variable cost ("AVC"), it relies on the general exclusionary terms of section 8(c) to allege that Forum priced at a less demanding threshold, but one that was nevertheless still exclusionary. This approach is perfectly acceptable and has not attracted criticism from Media24. Indeed in a previous decision in *Nationwide,* in discussing the difference between sections 8(c) and 8(d) in a predatory pricing case we held that:[8]

> *"The burden on the complainant in a complaint of predatory behaviour is higher under this section [8(c)] therefore than under 8(d)(iv). On the other hand the complainant is not bound to follow the prescribed cost formula suggested in 8(d)(iv). In other words if a complainant, relying on section 8(c), can show that a respondents costs are below some other appropriate measure of cost not mentioned in the section it may prevail provided that it adduces evidence of predation beyond mere evidence of costs."*

(i) No cause of action objection

[17] In the Commission's referral, it places no reliance on actions by Vista. In the supplementary affidavit, the further particulars implicate Vista and refocus the Commission's case in respect of Forum.

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[8] *Nationwide Airlines (Pty) Ltd and others v SAA (Pty) Ltd and others* [1999–2000] CPLR 230 (CT) at page 10.

[18] In respect of Vista, the Commission alleges that it targeted certain customers of GNN, *inter alia*, by offering them special rates. The Commission states that it does not allege that these rates constituted a self-standing prohibited practice under the Act, but alleges that they served to make GNN more susceptible to the exclusionary strategy being affected through Forum.[9]

[19] The ways in which this pricing strategy was affected included: reduced advertising rates in Forum and to the *"extent necessary in Vista"*; bundled offers in terms of which advertisers were offered a discounted rate in both Vista and Forum, free advertorials, teasers, non standard size advertisements and advertisements in other Media24 publications.[10]

[20] The Commission states that in respect of Forum, its pricing is below AVC or below total cost; however, it makes no claim that Vista priced its targeted advertising below some measure of costs. Indeed it states the opposite – that it does not rely on the Vista pricing as a self-standing prohibited practice.[11]

[21] Media24 has seized upon this remark and alleges that the further conduct is excipiable on this basis alone. Media24 argues that if the conduct is not unlawful, i.e. below some legally unacceptable measure of pricing, it cannot be relied on to make a case, even if that case is made under the less demanding standard of section 8(c). Put simply, it argues, lawful actions cannot be used to buttress a case about supposedly unlawful actions.

[22] This argument is not supported by current case law in the European Union where the European Commission and the courts have in some cases found predation, but the emphasis in the decisions has focussed more on the price cutting than some notion of a lawful cost threshold such as marginal cost or

[9] See paragraph 16 of the supplementary affidavit.
[10] Paragraph 17 of the supplementary affidavit. 'Teaser' is a technical term in the industry for a note or graphic on the front page or in another inconspicuous part of the newspaper directing readers to a particular advertisement.
[11] Paragraph 16 ibid.

AVC.[12] Commentators have inferred that these cases represent decisions in which pricing above an economically relevant measure of cost has been found to be predatory and have criticised them for this, saying pricing above average total cost ("ATC") should be presumptively lawful.[13]

[23] O'Donoghue and Padilla avoid being categorical but state in cautionary terms:

"Condemning above-cost price cutting should be approached with considerable reserve, since price competition is almost always desirable and it is very difficult, if not impossible, to formulate a legal rule to distinguish between an above-cost price that will eliminate a competitor and one which will not."[14]

[24] The Tribunal has adopted a similar approach in the past to not condemning firms for mere price cutting. In *FFS Refiners* we stated:

"... it is not an offence under the Act merely to undercut one's competitor, no matter how stark the discrepancy in prices. Price competition is after all the essence of healthy competition. "[15]

However that case did not decide the issue of whether there should be some legal standard above which pricing could be lawful or presumed to be lawful.

[25] Media 24 urge us to decide this matter by following the approach not of the European courts but rather their critics. However, even if we were to follow the approach of the critics, a matter we do not need to decide now, Media 24's argument can only succeed if one views the pricing actions of Vista in

[12] Case C-62/86, *AKZO Chemie BV v Commission* [1991] ECR I-3359, *Eurofix-Bauco v Hilti* OJ 1988 L 65/19 and Case C-395/96P, *Compagnie Maritime Belge Transports SA, Compagnie maritime belge SA and Dafra-Lines A/S v Commission* [2000] ECR I-1365.

[13] See O'Donoghue, R. and Padilla, J. (2006) *The Law and Economics of Article 82 EC.* Oxford: Hart Publishing at page 277. *"A number of leading antitrust commentators...argue that all pricing above the relevant measure of cost should be presumed lawful."*

[14] See O'Donoghue and Padilla op cit page 280.

[15] *FFS Refiners (Pty) Ltd v Eskom and others* [2003] 1 CPLR 180 (CT) at paragraph 19.

isolation of those of Forum. But in an exception case, as we noted earlier, the excipient has to accept the correctness of the facts of the case as it is pleaded. In this case the Commission has not pleaded the pricing actions of Forum and Vista as separate activities. To the contrary, its case is that they are linked. This is why the examples referred to by Media24 in the commentaries on the European case law are not in point. They deal with predatory actions by one firm, where pricing has been aggressive but not below ATC. They do not deal with a case on the current pleaded facts, where the dominant firm (Media24) is alleged to make use of two vehicles (i.e. Forum and Vista) for its exclusionary strategy, where the one vehicle (i.e. Forum) is still alleged to be pricing below some unjustifiable threshold of cost, albeit that the other being used in the stratagem (i.e. Vista), may be pricing above that threshold.

[26] This distinction cannot be ignored. Forum's below cost pricing remains fundamental to the Commission's 8(c) case. Indeed, in the further particulars, Forum is described as the *'primary vehicle'* used to effect Media24's exclusionary strategy.[16] The Commission is contending that the use of below cost pricing by Forum, *'buttressed'* by the pricing conduct of Vista is exclusionary. What the Commission is alleging is that Media24 is utilising both these vehicles as part of its exclusionary strategy. The conduct of Vista is not to be taken in isolation; Vista is being used to target certain advertisers whose custom GNN seeks to rely on. In argument the Commission's counsel described this as a strategy of exclusion premised on two pincers. The two titles represent each pincer. Vista was used to target what the Commission describes as local customers of GNN in order to induce them not to advertise with the latter.[17] The essence of the Commission's case is the alleged concertation between the two titles in affecting an exclusionary strategy.

[27] We do not have to decide now whether this theory of harm under section 8(c) will ultimately prevail. We only have to decide, for purposes of determining

[16] Paragraph 14 ibid.
[17] Paragraph 15 ibid.

the exception, whether it can never prevail. Expressed differently, could such an allegation never sustain a cause of action under section 8(c) so that it falls to be dismissed at this stage without the need to go to trial.

[28] The fact that actions by a dominant firm on their own may be lawful does not immunise them from prosecution as an abuse when done in concert with other actions. After all abuses are forms of conduct that are otherwise lawful; they become susceptible to legal attack because they are performed by a dominant firm. In the same way acts taken in isolation by a dominant firm may be lawful, but taken cumulatively with other actions by the same dominant firm they may, viewed from this vantage point, be considered as pieces of a larger unlawful exclusionary act.

[29] As Areeda and Hovenkamp have explained in their treatise when dealing with monopolisation:

"Any one exclusionary act may seem trivial. Indeed, we shall often be unable to find that several such acts, taken together, probably "caused" or contributed significantly to the defendant's power. Yet such acts can determine the often marginal choice of an actual or potential rival deciding whether to expand or enter a market."[18]

[30] Both case law of the European Union and commentators who write about it, support this approach of not looking at acts in isolation. In *Post Danmark,* the European Court of Justice, whilst holding that discounting by a dominant firm that led to pricing that was still above average incremental cost was not unlawful, still cautioned the need to consider all circumstances:

"In order to determine whether a dominant undertaking has abused its dominant position by its pricing practices, <u>it is necessary to consider all the circumstances</u> and to examine whether those practices tend to remove or restrict the buyer's freedom as regards choice of sources of supply, to bar

[18] Areeda, P. and Hovenkamp, H. (2001) *Antitrust law.* New York: Aspen Publishers at paragraph 651c.

competitors from access to the market, to apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, or to strengthen the dominant position by distorting competition (see, to that effect, Deutsche Telekom v Commission, paragraph 175 and case-law cited)." [19] (Our emphasis)

[31] This sentiment is expressed in even stronger terms by O'Donoghue and Padilla who wrote prior to the *Post Danmark* decision. They discuss certain cases where exclusionary conduct has been found despite pricing above ATC:

"The most convincing explanation is that pricing above ATC is only unlawful when it is coupled with a range of other exclusionary practices i.e there is cumulative evidence of abuse as part of a plan to eliminate a rival. The pricing is not unlawful in itself but can be viewed as unlawful where it is linked with other exclusionary practices. The pricing is a key part of an overall exclusionary strategy and there is no other explanation for it." [20]

[32] They go on to say:

"Finally, in the context of loyalty rebates, the Court of First Instance has confirmed that it is appropriate to have regard to the cumulative effect of a series of practices with similar objectives when assessing their legality. While this does not absolve a plaintiff or competition authority from proving that certain abuses did occur, it may allow a practice that would otherwise be lawful to be regarded as unlawful in circumstances where it is a part of an overall strategy of abusive behaviour." [21]

[33] Similarly in commenting in his opinion on *Compagnie Maritime Belge v the Commission*, the Advocate General, in a much cited passage, stated that

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[19] Case C-209/10 *Post Danmark A/S v Konkurrencerådet*, judgment of 27 March 2012: paragraph 26.
[20] See O'Donoghue and Padilla op cit page 281.
[21] Supra page 282.

whilst price competition was the essence of free and open competition there were nevertheless circumstances when price cutting may be of concern:

"Different considerations may, however, apply where an undertaking which enjoys a position of dominance approaching a monopoly, particularly on a market where price cuts can be implemented with relative autonomy from costs, implements a policy of selective price cutting with the demonstrable aim of eliminating all competition by pursuing a selective pricing policy which in the long run would permit it to increase prices and deter potential future entrants for fear of receiving the same targeted treatment."[22]

[34] At the risk of repetition we do not need to decide whether these approaches should be followed in our law. What they illustrate is that an argument that the Commission's approach finds no support in other case law or commentary is without foundation. Whether a particular set of actions of a dominant firm are exclusionary is a fact specific issue that must be decided at trial. It is not an issue that can be determined categorically at exception stage; factors such as the relationship between the actions, (in this case this means those of Vista and Forum and the approach that Media24 took to them which on the Commission's case suggests a joint approach), the nature and characteristics of the particular industry, the period of the alleged predation and the justification for the actions, all matter in the final determination. These facts must first be established before assumptions can be made as to whether behaviour adopted by a respondent firm in the final analysis is more consistent with a stratagem to exclude a rival or a legitimate business response to a competitive challenge.

[35] As long as the case pleaded by the Commission may establish such a case, it must survive the test for exception. We find that it does.

[36] We thus find that Media24 has failed to establish that the Commission's supplementary affidavit discloses no cause of action under section 8(c).

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[22] Whish, R. and Bailey, D. (2012) *Competition Law.* New York: Oxford University Press at page 751.

(ii) Vague and embarrassing objection

[37] Where we have some sympathy for Media24 is the objection of vague and embarrassing as it concerns the allegations pertaining to Vista. Media24 is entitled to be provided with further particulars of the pricing strategy alleged to have been used by Vista in order to be able to appreciate the nature of the case against them. The manner, duration, and time period in which the targeting of certain customers of GNN is alleged to have taken place should be specified, given that the complaint period relates to a five year period and may implicate many events, which Media24 cannot be expected to divine without assistance. If the Commission has received this information from its recent consultations and/or discovery of documents it should be able to provide them. For this reason further particulars have been ordered. The Commission must either provide this particularity or if it cannot, not persist with this allegation.

[38] The details of the particulars it should provide are set out in the attached order and are self-explanatory.

The 8(d)(iv) complaint

[39] Unlike the 8(c) complaint, the 8(d)(iv) complaint is confined to the actions of Forum. The case made out in the complaint referral is that Forum was used as a fighting brand against GNN. To that end its pricing was during the relevant period of the complaint either below AVC where the variability of costs are based on the whole period or on an alternative approach, below AVC where the variability of costs are based on a one year period. To that case Media24 has been able to plead and it did so.

[40] During the discovery applications Media24 suggested that it did not understand the Commission's approach to the methodology it would adopt in its predation case. In response the Commission decided to explain its approach further. It is to this explanation that Media24 excepts.

[41] In the further particulars, in one paragraph, the Commission, under a heading 'Clarification of cost measures', states the following:

"In those circumstances, the Commission submits that it is relevant from an economic perspective to compare the incremental costs of operating Forum (being the costs that are "variable" or "marginal" to the decision to operate Forum) and the associated incremental revenues obtained by Media24 from operating Forum for purposes of:

> *25.1 the Commission's complaint against Media24 under section 8(d)(iv) of the Act; and*
>
> *25.2 the below-cost pricing aspect of the Commission's complaint against Media24 under section 8(c) of the Act."*[23]

[42] Media24 has interpreted this paragraph as suggesting that instead of opting for one of the cost based models set out in section 8(d)(iv) (i.e. below marginal cost or AVC), the Commission is attempting to rely on the notion of incremental costs. The Commission in response has argued that it has not abandoned the AVC test. Rather, it wished to signal to Media24 that it was using all the costs of Forum, the so-called fighting brand, as incremental costs, so Media24 could understand the Commission's approach, but that in this case, the incremental and AVC approach would lead to a congruent result. Media24 does not accept this clarification. Incremental costs Media24 argues, by definition include fixed costs, unlike AVC which do not, and hence it argues the Commission is relying on a standard that is not cognisable under the test in section 8(d)(iv).

[43] At this point, a departure to consider what is meant by certain of these terms is warranted. Section 8(d)(iv) as we have noted refers to two cost bases, namely marginal cost and AVC.

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[23] See page 25 of Commission's supplementary affidavit.

[44] Marginal cost is understood to refer to the additional cost of producing an additional unit of output.

[45] AVC is defined as total variable costs (i.e. those costs that would increase if a firm chose to increase its output) divided by the total number of units produced.

[46] ATC is the sum of all variable and fixed costs divided by total output. Its significance is that only if pricing is above ATC will the firm make a profit each year.

[47] Long-run average incremental cost ("LRAIC") is the average of all the costs that a company incurs to produce a particular product assuming that its starts afresh or the cost of the incremental output associated with the exclusionary conduct. This cost includes both fixed and variable costs and sunk costs.[24]

[48] Whilst these definitions might be reasonably uncontroversial their application is not. Fixed and variable costs may be fixed notions conceptually, but they are variable in their application depending on the time period selected. As the authors of a well known micro economic text book have explained:

"*How do we know which costs are fixed and which are variable? The answer depends on the time horizon that we are considering. Over a very short time horizon – say, a few months – most costs are fixed. Over such a short period, a firm is usually obligated to pay for contracted shipments of materials and cannot easily lay off workers, no matter how much or how little the firm produces.*

On the other hand, over a longer time period – say, two or three years – many costs become variable. Over this time horizon, if the firm wants to

[24] The definitions have been obtained with reference to two sources: Neils, G., Jenkins, H. and Kavanagh, J. (2011) *Economics for Competition Lawyers*. Hampshire: Oxford University Press at pages 189-198 and also Bishop, S. and Walker, M. (2010) *The Economics of EC Competition Law: Concepts, Application and Measurement*. 3rd edition. Sweet and Maxwell at pages 341-6.

reduce its output, it can reduce its workforce, purchase fewer raw materials, and perhaps even sell off some of its machinery. Over a very long time horizon – say, ten years – nearly all costs are variable. Workers and managers can be laid off (or employment can be reduced by attrition), and much of the machinery can be sold off or not replaced as it becomes obsolete and is scrapped."[25]

[49] Since the Commission's case as pleaded still relies on AVC, it has met the standard required by the section and cannot, on this basis, be excipiable. The allegation that these costs will be congruent to incremental cost is a question of fact and expert evidence and cannot be elevated to a proposition of law so that it falls to be determined as being wrong at exception stage.

[50] We thus find that the exception that the Commission's supplementary affidavit makes out no cause of action in respect of section 8(d)(iv) fails.

The 8(d)(iv and 8(c) complaints are contradictory

[51] Finally, we consider an argument by Media24 that the complaints under section 8(c) and section 8(d)(iv) are contradictory. The argument is that a predation case is either good under section 8(d)(iv), because it meets the threshold requirements of that sub-section, and if it is not, and is still related to predation, then it can only be made under section 8(c). The same set of facts cannot exist under both sections. Media24 argues that the case based on incremental costs is precisely this; one that seeks to exist on the foundations of the same allegations under both sections. However, this again is a mischaracterisation of the Commission's case. Under section 8(d)(iv), the Commission's case is that the Forum pricing is below AVC and therefore a contravention. It will contend that in that situation incremental costs are the same as AVC. Its case under section 8(c) is properly pleaded as an alternative case. For instance after hearing the matter the Tribunal

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[25] Pindyck, R. and Rubinfeld, D. (2009) *Microeconomics*. 7th edition. New Jersey: Pearson Education at pages 224-5.

might find that Forum's costs were above AVC, but still below its incremental cost. This might happen for instance if the Tribunal found that some of Forum's costs were fixed, rather than variable. In such a situation AVC would not be 'congruent' with AVC, which is its 8(d)(iv) case, but the Commission would still want to argue that the below incremental cost pricing was nevertheless exclusionary, for the purposes of a contravention of section 8(c). Thus there is no contradiction, but a legitimately pleaded alternative case.

CONCLUSION

[52] The objection that the Commission's supplementary affidavit fails to disclose a cause of action is dismissed. The objection based on vague and embarrassing is partly upheld in relation to the allegations concerning Vista and further particulars in this regard have been ordered. The objection that the Commission's two counts under section 8(c) and section 8(d)(iv) are contradictory is also dismissed.

ORDER

[53] The Commission is granted leave to file its supplementary founding affidavit, dated 26 February 2013, in support of its complaint referral in this matter, subject to the following:

53.1 The Commission must within 20 business days of this order supply further particulars in relation to the allegations in terms of section 8(c) insofar as they concern Vista as follows:

In relation to the allegations of Vista's targeting of certain customers of GNN:

53.1.1 The time period in which the targeting alleged to have taken place and for how long was it alleged to have operated.

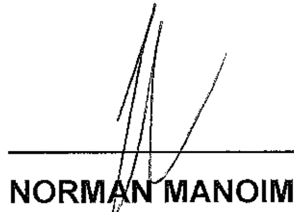
53.1.2 The customers (i.e. advertisers) who were targeted, alternatively the type of advertisers by reference to class of business or area of operation.

53.1.3 The nature and extent of the discounting. More particularly, how did it compare with the pricing offered to non-targeted customers of Vista and, if appropriate, Forum?

53.1.4 Is it alleged that Vista and Forum co-ordinated their approach to discounting? If so, provide succinctly the facts on which the Commission will rely for this proposition.

53.1.5 What facts does the Commission rely on to state that Media24's strategy was exclusionary as opposed to a normal business response to competition in the relevant market?

[54] Media24 is given leave to file a supplementary answering affidavit provided it does so within 20 business days of the filing of the Commission's further particulars contemplated in paragraph 53.1 above.



NORMAN MANOIM

28 March 2013

DATE

Yasmin Carrim and Andreas Wessels concurring

Tribunal Researcher:	Nicola Ilgner
Tribunal In-House Economist:	Andrew Sylvester
For the Commission:	Adv. J Wilson and Adv. G Marriott, as instructed by Gildenhuys Malatji Attorneys
For Media24 (Pty) Ltd:	D Unterhalter SC and Adv. M Norton, as instructed by Werksmans Attorneys