competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: OTH216Feb15/DSC096Jul15

In the interlocutory application between:

Caxton and CTP Publishers and Printers Limited	Applicant
And	
Media 24(Proprietary) Limited	First Respondent
Paarl Media Group (Proprietary) Limited	Second Respondent
Paarl Coldset (Proprietary) Limited	Third Respondent
Paarl Media Holdings (Proprietary) Limited	Fourth Respondent
Lamberts Philips Retief	Fifth Respondent
The Competition Commission	Sixth Respondent

Panel	: Norman Manoim (Presiding Member) : Mondo Mazwai (Tribunal Member) : Yasmin Carrim (Tribunal Member)
Heard on	: 28 September 2015
Order Issued on	: 9 November 2015
Reasons Issued on	: 9 November 2015

Order and Reasons for Decision

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[1] This is an interlocutory application where we have to decide whether the applicant, Caxton and CTP Publishers and Printers Limited ("Caxton"), is

entitled to the production of a set of documents from the first to the fifth respondents ("the respondents") currently in the possession of the Tribunal registry, but which are the subject of a confidentiality claim by the respondents.[1] As the documents remain the subject of a confidentiality claim the registrar of the Tribunal has indicated to Caxton that they may not have access to the documents without either the consent of Caxton (which has been refused) or an order of the Tribunal hence this application.

Background

[2] Media 24 (Proprietary) Limited, the first respondent ("Media24") and the Retief family (as represented by the fifth respondent) have historically owned separate printing businesses. Since 1995 the two entities have entered into a series of transactions in which these previously separate businesses have become the subject of evolutionary changes of ownership until they now reside in a single entity. The process of transactions on the way to this final structure has been one in which some transactions have been considered mergers and others not leading to a long running dispute between Caxton and the respondents which has featured in a number of cases before us.[2]

[3] In 2000, the heatset (i.e. magazine printing) interests of the two entities were merged into a single company known as NewPrint. This transaction was the subject of a large merger filing. In terms of this transaction, Naspers held 65% of the merged entity and Eagle Media, Paarl Post Web's holding company, which houses the Retief interests, held the remaining 25%. It is the record of this transaction – what we will term for convenience the '2000 record ' - that is the subject matter of this application.

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[1] The Competition Commission is cited as the sixth respondent but did not file any papers in either this application or the main application to which it relates. The term 'respondents' as used here is limited to only the first to the fifth respondents, who oppose the applications and who were all purportedly merging parties in the 2008 transaction which is the subject matter of challenge in the main application.

[2] Caxton and CTP Publishers and Printers Ltd v The Competition Commission, Paarl Media (Pty) Ltd and Primedia (Pty) Ltd 13/x/Feb11; Caxton, CTP Publishers and Printers Limited v Naspers Ltd, Electronic Media Network Ltd, Supersport International Holdings Ltd, The Competition Commission 16/FN/Mar04; Caxton and CTP Publishers Ltd v Printers Limited v Media 24 (Pty) Ltd; Nous Holdings Limited, Adbait (Pty) Ltd, Lambert Phillips Retief and The Competition Commission OTH225May15/020974.

The 2008 Transaction

[4] In 2008, a further transaction occurred. In this transaction Media24 sold its coldset printing interests (i.e. newspaper printing) then housed in its internal division called Print 24 and another division, called Infopac, which performs plastic wrapping of newspapers, to the third respondent. This transaction is the subject of the main application which we will term the '2008 Transaction'.

[5] The 2008 Transaction has a complicated history, the salient points of which we set out below. What is common cause (at least so it appears) is that the transaction was purportedly notified to the Commission, but as an intermediate not a large merger.

[6] This distinction matters because among the significant differences between an intermediate and large merger are that:

i. An intermediate merger can be approved by the Commission. A large merger must be approved by the Tribunal; and
ii. An intermediate merger has to be considered by the Commission within a fixed time period. If not the merger is deemed to have been approved.[3]

[7] When the transaction was notified in 2008, according to the respondents, the respondents' then attorneys described it as a "... *group internal restructuring*".

[8] In a letter to the Commission dated 24 July 2008 the following was said:

> "*As a result of a Media 24 group internal restructuring involving its printing businesses, Paarl Post* [this company later changes its name to Paarl Coldset Proprietary Limited "PCS", the third respondent in this case], *a wholly owned subsidiary of another subsidiary... which is also controlled by Media 24 (through a 75% shareholding) will acquire Print 24, the coldset newspaper printing division of Media24.... The effect of the restructuring of Media 24's*

[3] Sections 14(1) and 14(2) of the Act.

print interests as set out above, is essentially that Media 24 retains sole control over each of those businesses by virtue of at least its majority shareholding in each of the companies forming part of its group and involved in this restructuring transaction.[4] *More specifically,*

(a) Paarl Post, a subsidiary of Media24, will acquire direct sole control as meant in terms of section 12(1) of the Competition Act over the business of Media24 knows [sic] as Print24,

(b) Media24 will retain sole control of PMH, Print24 and Paarl Post by virtue of its majority shareholding in its subsidiary, the new firm to be formed, Paarl Media Group ("PMG")

(c) PMG will directly and solely control PMH and Paarl Post and their businesses (including the newly acquired business of Print24 and Infopac) by virtue of its majority shareholding in each.

Lambert Retief ("Retief") through-

(a) the minority shareholding of Retief family interests and a management agreement entered into with Media 24 during 2000 in respect of PMH (see decision of the Competition Tribunal .. in the large merger between Nasmedia and Paarl Post Web printers... as amended and renewed in 2005; and

(b) The shareholding of the Retief family trusts....

manages PMH and Paarl Post in accordance with the terms set out in the various agreements (and to the extent that these agreements have become terminated through the effluxion of time, alternatively were not formalised though signature, de facto in accordance with those terms) whilst Retief through the entities controlled by him ... retains a proprietary interest in PMI and Paarl Post."[5]

[9] The following features are noticeable from this extract. In the first place it appears to suggest that Media 24 through its intermediaries has sole control over PCS. Second, it suggests that Retief is a manager, but the manner in which this is described is ambiguous and confusing. Is Retief a joint

[4] Our emphasis.
[5] Our emphasis, See Record pages A 219 -220.

controller from this extract or simply a manager but not someone with joint control? The answer would seem to depend on the terms of what it describes as *"... the terms set out in the various agreements..."* The salience of these agreements will become apparent when we consider the 2000 record.

[10] It is apparent from the correspondence contained in the record regarding the 2008 transaction - and which the respondents attach to their answering affidavit in the main application - that the Commission took the view that it was not a merger, as it involved no more than restructuring by the Naspers Group and not a change of control.[6] An exchange of correspondence followed between the respondents' then attorneys and the Commission, in which the former insisted that in terms of existing case law even a restructuring was notifiable while the latter was adamant that it was not. [7]

[11] The respondents nevertheless purported to notify the transaction as an intermediate merger. The Commission never responded to the filing with an acknowledgement as it customarily does. Eventually the respondents on enquiring as to whether the Commission had extended the merger investigation period, as it is required to do for an intermediate merger if it has not completed its investigation in the prescribed time, discovered that the Commission had not. This meant, at least as the respondents understood the situation at the time, that the transaction was deemed to have been approved as a merger unconditionally by virtue of the deeming provisions in the Act.[8] As the Commission has also not filed papers in this matter, despite Caxton having cited it as a respondent, we can only assume that it still holds to its 2008 position, which was because the transaction constituted an internal restructuring, it did not meet the legal definition for a merger, and consequently it had no jurisdiction over it. [9]

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[6] The Naspers Group comprises, amongst others Media 24, MultiChoice and DSTV.
[7] See *Distell* case 31/CAC/Sep03.
[8] Section 14(2).
[9] The respondents acknowledge that the Commission has not issued it a clearance certificate but make the point that the filing fee they paid was not refunded.

[12] The Commission's position on this matter is the key factor in this dispute. From the correspondence referred to earlier it appears that the Commission was told by the respondents' attorneys in 2008 that the transaction whilst technically a merger entailed only an *"... internal restructuring"* in the Naspers group. This description of the transaction appears to have been accepted by the Commission's staff at the time. However, bizarrely, the debate that then ensued in the correspondence was then over whether an internal restructuring – a factual contention the Commission did not appear to query - was sufficient to constitute a change of control that transformed what might have been a simple transaction into a merger. The Commission and the merging parties had curiously opposite views on the legal issue with the regulator contending that this was not a merger whilst the parties to the transaction contended it was – a reversal of the normal roles.

[13] The matter remained dormant – other than the transaction was implemented – until – when Caxton brought the main application on 27 February 2015. Caxton alleges that the merger was not notified alternatively, was incorrectly notified as an intermediate merger. In its founding papers in the main application Caxton's deponent Paul Jenkins, the company's executive chairman, sets out a lengthy history to the 2008 transaction. In his chronology he references the 2000 merger and quotes from the Tribunal's reasons for approving that transaction which are in the public domain. The extract quoted suggests that the respondents (or the relevant ones at the time) had stated that Retief was the controller of the then merged firm.[10]

[14] Jenkins' contention was that this submission was contrary to the stance taken in 2008 where Retief's role as manager is subordinated, whilst Media 24 is described as controlling the transferred business both pre and post-merger.

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[10] In the Tribunal Decision, Nasmedia and Paarl Post Web Printers (Pty) Ltd 65/LM/May00 found at page A21 of the record *"The parties made much of the fact that the merger agreements did not give Nasmedia, the largest shareholders with 65% of the shares, management control of the company because in terms of the agreements Mr. Retief of PPW would be employed for a minimum of five years as the Managing Director of Newprint. The agreement gives him a large measure of autonomy in the running of the company. This they say means that Mr. Retief and not Nasmedia controls the company and any concerns over Nasmedia's dominance is alleviated because Mr. Retief would not allow the company to be run in a manner contrary to the best interests of Newprint where those interests conflicted with those of Nasmedia."* (The Applicant's emphasis)

[15] In their answering papers in the main application – and hence the germ of the current dispute the deponent Aduraghman Mayman, the chief financial officer of Media24 responds to the reference to the 2000 merger in this way:

> *"Caxton's failure to produce the relevant merger notification, Commission recommendation and/or Tribunal determination means that there is no basis for concluding that the extract is a fair reflection of the documentation and information placed before the competition authorities at the time."*

[16] The 2000 merger is also referred to in the answering affidavit at paragraph 102.1:

> *"with respect no guidance in determining this application can be gained by what the Tribunal observed some 15 years ago in relation to a transaction predating the restructuring by some eight years."*

[17] Caxton has not yet filed its replying affidavit. Its response to the answering affidavit, as noted, was to request the 2000 record from the Registrar and when this was declined (for the reasons earlier indicated) from the respondents, who refused, hence this application.

[18] We now go on to consider both the legal basis for the request and the refusal.

The current interlocutory application

[19] In argument before us Caxton argued that it was entitled to the document in terms of Tribunal rule 13(1) read in context of a constitutional right to information in terms of section 32 of the Constitution. We will call this for simplicity the right to information argument. The second argument was an entitlement to the document as it had been referred to by the respondents in their affidavits and hence this called for an application of the High Court Rule 35(12) which deals with this right specifically and has been considered by us in other cases. We will refer to this as the rule 35(12) argument.

The right to information argument

[20] Recall that the document sought is the 2000 record which is in the Tribunal's registry. It is thus sought from the registry not directly from the respondents although the rule requires the latter's consent as the information has been claimed as confidential. Caxton argued that in terms of rule 13(1) of the Tribunal rules any person upon payment of the prescribed fee may inspect a record of the Tribunal. This argument was made as a self-standing argument, separate to the one advanced under rule 35(12) and is bolstered by section 32 of the Constitution which provides for access to information held by the state.

[21] The respondents objected to this argument, not on its merits but largely on the basis that it was not the one contemplated in the papers, nor indeed even in the heads of argument prepared by Caxton. In our view this position is correct and it would be unfair to the respondents for us to consider this argument any further.

[22] We go on to consider the rule 35(12) argument.

The Rule 35(12) argument

[23] The rule 35(12) argument is the one raised in the present application and the one that more credibly fits into the events of this application as it was only in the face of the answering affidavit from the respondents that the documents have been sought i.e. the classic rule 35(12) context.

[24] Rule 35(12) provides as follows:

> *"Any party to any proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or transcription thereof..."*

[25] Rule 35(12) is not part of the Tribunal rules nor do our rules have an equivalent. However in terms of Tribunal rule 55(1)(b), where a question of practice or procedure arises in the course of a hearing for which there is no provision in the Tribunal rules the member presiding may have regard to the High Court Rules. We have previously had regard to rule 35(12) in other matters and since there was no dispute on this point we need not consider the question of its application in terms of our Rule 55(1) any further.[11]

[26] On the assumption that we will have regard to this High Court rule, the next question is whether the respondents have in their answering affidavit made a reference to the 2000 record. The 2000 record is referred to by the respondents in response to Caxton's reliance on a passage quoted from the Tribunal's reasons in that merger. The respondents, in that response, pose a challenge to Caxton, saying that its (Caxton's) failure to attach the record undermines its (Caxton's) reliance on the reliability of the passage quoted from the Tribunal's reasons.

[27] The innuendo is thus to suggest that the reliance is misplaced and had the record been attached, an implied ommission for which Caxton is criticised, the submission made would prove to be false. This amounts to a reference to a document for the purpose of rule 35(12) and in substance is no different to the deponent, who at least purports to have knowledge of the 2000 record, and says, I know what is in the record, it does not support what you say and that is why you did not attach it. Having thus ventured to make this comment through their chosen deponent, the respondents cannot contend that they have not referred to the 2000 record. Note that the rule requires only reference not reliance. In a letter to the applicant's attorney the respondents' present attorney denies that this reference amounted to reliance, but reliance is not the test, only referral. In oral argument the respondents did not make much of this point, correctly so in our view.

[28] The weight of the dispute between the parties was whether the record is relevant to the issues in the main application and further on whom the onus

[11] Competition Commission v Arcelor Mittal South Africa Ltd and others 61/CR/Sep09

in this regard rested. Not only were the factual issues contested but also the proper legal test to apply. Was it for the applicants to establish its relevance or the respondents to assert its irrelevance?

[29] We will first consider the factual issues and then consider the legal test to be applied.

[30] Jenkins for Caxton contends that the 2000 record is directly relevant to the 2008 transaction because of a dispute about whether in the "*formative years*" of the relationship between Media 24 and Retief, the parties had then stated that Paarl Media was separate from Media 24 and that Retief had operational autonomy and de facto control over the Paarl Group.[12]

[31] Why is this fact so important to Caxton in the main case? Jenkins says because the 2000 transaction constitutes as he put it *"the baseline from which future allegations regarding control over Newsprint (now Paarl Media) must be assessed.*" If Retief's control as expressed there had changed says Jenkins this would have had to be notified, but no notification took place until a notification in 2014 which was abandoned.

[32] Jenkins does not in this part of his affidavit make the link with the 2000 record and the 2008 transaction. The 2000 merger dealt with control over Paarl Media and the 2008 transaction deals with a separate company PCS although again one in which both Media 24 and Retief have an interest. However the letter of 24 July 2015 from the respondent's attorneys does make the link, as from this letter it is clear that whatever management contract Retief had with Paarl Media is the same as he would have with PCS. Put another way whatever the effect of Retief's managerial powers de jure and de facto in the one entity would appear to be replicated in the other. Recall that in that letter the respondents' then attorneys referred to Retief's managerial powers being exercised "*...in accordance with the terms set out in the various agreements".* [13]This must be a reference to the agreements contained in 2000 record . The respondents do not appear to contend

[12] Jenkins affidavit, record pages B9-10, paragraph 15.
[13] Our emphasis.

otherwise hence the challenge to Caxton about not attaching the 2000 record.

[33] What the respondents do say about the document's irrelevance is this.

[34] In the main matter, at least on the evidence of its answering affidavit, and as confirmed by its counsel at this hearing, the respondents will argue that the issue as to whether the merger was notified is not in dispute as it was. What is in dispute, they contend, is the issue of whether it was an intermediate or large merger. This according to the respondents turns solely on the method they adopted for the calculation of the turnover of the acquiring firm. For a merger to qualify as a large merger both the turnover/ asset values of the so-called transferred firm must exceed the prescribed threshold as well as the turnover/asset value of the acquiring firms. There is no dispute say the respondents that the transferred firm's turnover exceeds that for an intermediate merger.

[35] So why then is this not a large merger?

[36] The respondents' contention is that whilst Media 24 is an acquiring firm post transaction, it was also a selling or transferring firm. Since it was both, they argue its turnover cannot be counted twice and should only be counted as part of the transferring firm's turnover not the acquiring firm's and hence, once Media 24's parent's turnover is excluded from the acquirers' turnover calculation, even if one considers the Retief entities as controllers or joint controllers, the merger falls to be considered as an intermediate one. Recall that to qualify as a large merger both the prescribed thresholds for the transferred firm and the acquiring firms must be exceeded. Only the large turnover of Media 24's parent Naspers, not that of Retief, pulls the merger over the intermediate into the large merger threshold, provided it is counted in as an acquiring firm. The respondents' contention is thus that in relation to this issue in dispute in the main application the production of the 2000 record is thus irrelevant. Expressed differently whether or not Retief is a controller or joint controller is not relevant to this issue of the threshold calculation.

[37] It is not necessary for us to decide now whether the respondents' approach to the turnover calculation is a correct application of the rules, as this remains an issue in the main application. We only raise it as it relates to the context of the documents sought for the main application.

Analysis of the factual issues

[38] The main application seeks relief that the transaction is notified as a large merger. Caxton acknowledges in its founding papers that there was a notification but states that the notification was not proceeded with and it was not notified as a large merger.

[39] There seem to be two issues to consider regarding the relevance of the 2000 record. The first is what we describe as the 'narrow issue'. This is the respondents' contention that the only issue left to be decided in the main application is the methodology of the turnover calculation. For this to be resolved they contended the 2000 record is irrelevant. Caxton's response was that the identity of the acquiring firms is an essential one for notification this is not simply an accounting question; one cannot assess control without knowing who controls; hence the need for the 2000 record to identify the Retief relationship to the control structure and why it appears to have changed eight years later. Hence Caxton sees its relevance as interconnected to an issue of juristic fact; before you decide on whether this is a large or an intermediate merger, you have to know who the acquirers are; regardless of whether for accounting purposes the identity of one may not be material to the accounting calculation, it is material to understanding who controls.

[40] We would agree with this submission but go further to suggest that even for the purposes of the accounting argument, which appears to rest on whether Naspers is being double-counted as both a seller and buyer of assets, one may need to have regard to whether the buyer is solely 'oneself' – an

internal restructuring – or a joint venture between the seller and another. If the 'other' is Retief, which the 2008 notification is ambivalent about, then this is relevant even to the proper assessment of the methodology argument. This is not a legal issue we have had to decide previously. To decide it without at least certainty on this factual point – even if in the final analysis we can decide that it is a neutral fact - would be to irrationally blinker ourselves in respect of all the underlying facts or to deprive the opposing party to at least have regard to it in argument. Thus for these two reasons on the narrow argument we find that the documents in question are not irrelevant to the facts in issue.

[41] Secondly there is a wider relevance point. The Commission on the respondents' version did not accept that the merger was notifiable, it seems on the say so of the respondents that this was an internal restructuring as set out in the letter quoted at length earlier. If however this was not an internal restructuring, but a movement of assets from the sole control of Media 24 to the control of Retief or the joint control of Retief and Media 24, then the Commission may have taken a different view about notifiability. If they would have taken a different view on notifiability what view would they have taken on whether it was intermediate or large. That we don't know.

[42] Since this fact is important given that the second prayer in the Notice of Motion is to call upon the Commission to investigate the merger as a large merger, the issue of whether control is an internal restructuring or joint venture is salient to what they must investigate and hence suggests again that the 2000 record is not merely not irrelevant but possibly relevant to the issue.

Who has the onus

[43] A key issue in this matter has been the debate as to who has the onus to prove relevance. At the time the matter was argued the issue concerned whether we should follow our own precedent in the matter (*AMSA*) [14] or the

[14] Opcit footnote 11 c

High Court decisions under rule 35(12). Rule 35(12) unlike other rules relating to discovery does not require a document to be relevant in order for a party to be entitled to seek its production. However courts have not gone so far as to dispense with the notion of relevance and there are instances when even the reference to a document will not lead to an order to produce. In *Gorfinkel* Friedman J held precisely this.[15] However he went on to hold that the onus to prove that a document was not relevant, lay with the party resisting production, as that party was familiar with the contents of the document and was best placed to assert why it had mentioned it in the first place and now sought to disavow its relevance. Another High Court decision however took the opposite approach placing the onus it seems on the person applying for the document when its relevance was placed in dispute.[16]

[44] However subsequent to hearing argument in this matter the respondents drew our attention to a recent decision of the SCA on the interpretation of Rule 35(12) in the *Fochville* case which was issued a few days after argument in our matter. Given the possible importance of the decision to the issues *in casu*, we allowed both parties to make further written submissions to us on the decision. Both parties contended that the decision validated their particular approaches.

[45] The respondents contended that the decision is authority for the proposition that in considering the issue of relevance there is no longer an issue as to who has the onus. Since *Gorfinkel*, up until then considered the most authoritative case, placed the onus on the party resisting production to show its irrelevance, it is not surprising that the respondents would rely on the *Fochville* decision which appeared to relieve them of this burden.

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[15] *Gorfinkel v Gross Hendler & Frank* 1987 (3) SA 766 (C) 776H *"A document which is irrelevant will also not be subject to production. As it would not necessarily be within the knowledge of the person serving the notice whether the document is one which falls within the limitations I have mentioned, the onus would be on the recipient of the notice to set up facts relieving him of the obligation to produce the document. Page 774 "*

[16] Universal City Studios v Movie Time 1983 (4) SA 736 (D)

[46] However Caxton also relied on another aspect of the decision to suggest the decision supported its case although the burden of its argument was around the claim for confidentiality with less emphasis on the issue of relevance.

[47] However both parties agreed that in the place of the issue of onus, which the Court had characterised as *"...misconceiving the nature of the enquiry"* (paragraph 18); it held that the proper approach was to use a *"general discretion to try and strike a balance between the conflicting interests of the parties to the case."*(paragraph 18).

[48] This is the approach we will take in this case. We have nevertheless characterised the issues as either relevant or 'not irrelevant' in a manner similar to the prior approach in *Gorfinkel* as a means of identifying the issues properly in order to exercise our general discretion. Hence on what we termed the 'narrow issues' the documents sought are characterised as 'not irrelevant' whilst on the wider issue they are characterised as relevant. Since the issue of which party has to discharge the onus is no longer considered a proper approach we have decided that for both reasons the documents should be produced as an exercise of our general discretion to properly decide the matter.

[49] Further in exercising our discretion in favour of ordering production it must be pointed out that although this is a private dispute between the parties, and not implicating the Commission as yet, the outcome of the enquiry is not private. If the merger has not been properly notified this may mean that it must be re-notified and investigated by the Commission in which case it has public consequences beyond the dispute between the parties. This is an important further issue that motivates us to exercise our discretion in favour of production of the documents. It is also the reason we have favoured ordering production as a remedy as opposed to merely striking out the references to the 2000 record in the respondents affidavit.

[50] However the countervailing privacy interests of the respondents can be balanced by restricting access of the documents to the applicant's legal team on production of confidentiality undertakings and limiting access of the

record only to those of the respondents' documents, not those of third parties who may have filed confidential information with the Commission during the course of filing the 2000 record.[17] Further since the documents exist in the public archive of the Tribunal there is no burden imposed on the respondents to find these documents that are at least fifteen years old.

[51] The remaining interest of the respondents that the production of the document will prejudice them because the applicant will use it in other proceedings is not sufficiently cogent to justify exercising our discretion in their favour.

[17] It seems unlikely that any did, given that the Commission did not consider this a merger and did not investigate it.

ORDER

Having heard counsel the Tribunal makes the following order:

1. The application for production in terms of High Court Rule rule 35(12) is hereby granted subject to the terms of paragraphs 2 – 4 below.
2. For ease of convenience to the parties, the registrar of the Competition Tribunal must release to the legal representatives of the applicant for inspection and if necessary copying the record of the Nasmedia and Paarl Post Web Printers (Pty) Ltd (65/LM/May000)[2000] ZACT 34 (22 August 2000) merger (the "2000 record") subject to the following-
   2.1. The 2000 record must exclude any document which is subject to a third party claim of confidentiality; and
   2.2. The prior furnishing by the legal representatives of the applicant of appropriate confidentiality undertakings from the persons who will be given access.

3. The 2000 record is to be released within 3 days of the registrar receiving the undertakings referred to in paragraph 2.2

4. The registrar must provide the respondents with copies of the undertakings referred to in paragraph 2.2

5. The respondents jointly and severally must pay the applicant's costs of this application on a party and party scale including the cost of one attorney and one counsel.

09 November 2015
DATE

Mr Norman Manoim

Ms Mondo Mazwai and Ms Yasmin Carrim concurring

Tribunal Researcher: Aneesa Ravat
For the Applicant: C. Steinberg instructed by Nortons Inc.
For the First to Fifth respondents: R. Pearse instructed by Werksmans Attorneys