COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 36/LM/Apr04

In the large merger between:

Johnnic Publishing Ltd

and

New Africa Publications Ltd

Reasons

Approval

1. On 02 July 2004 we unconditionally approved the transaction between Johnnic Publishing (Pty) Ltd ("Johnnic Publishing") and New Africa Publications Ltd ("NAP"). The Tribunal's reasons for its approval follow.

The transaction

2. In terms of the merger agreement, Johnnic Publishing will acquire 90.5% of the issued share capital of NAP from NAM. The remaining shares will be owned by an Employee Share Trust (9.25%) and minority shareholders (0.25%).

3. Post-merger, Johnnic Publishing will have sole control over NAP.

Rationale

4 Nail is presently liquidating itself of most of its assets. Johnnic Publishing is a logical buyer given its relationship to some of the assets owned by NAP.

The parties to this merger

5. The primary acquiring firm is Johnnic Publishing, a local wholly owned subsidiary of Johncom, a public company listed on the JSE Securities Exchange. Johncom is controlled by Johnnic Holdings Limited ("Johnnic Holdings"), which holds 62.5% shareholding and is in turn controlled by the National Empowerment Consortium ("NEC")[1]. Johnnic Publishing controls fifteen (15) firms in South Africa, i.e., seven (7) trading subsidiaries and eight (8) dormant subsidiaries. Its active subsidiaries, none of which controls any other firm, are as follows:

- Johnnic Publishing Eastern Cape (Pty) Ltd (100%);
- African Business Channel (Pty) Ltd (100%);
- Library Network (Pty) Ltd (100%);
- National Circulation Services (Pty) Ltd (100%);
- Dispatch Media (Pty) Ltd (70%);
- Picasso Headline (Pty) Ltd (70%); and

[1] NEC is a consortium established by labour unions and black owned businesses.

- PR Newswire (Pty) Ltd (51%).[2]

6. NAP has interests in the following five (5) firms (none of which controls any firm):

- The Sowetan (100%);
- Sowetan Sunday World (50%);
- Sowetan Television (Pty) Ltd (50%);
- New Africa Publications Magazines Ltd (Leadership Magazine) (100%); and
- Allied Publishing Ltd ("Allied") (33.3%).[3]

<u>The activities of the merging parties</u>

<u>Johnnic group</u>

7. Johnnic Holdings is a holding company with interests in the media, telecommunications, entertainment, casino, exhibition and property industries. Johnnic group operates in the following sectors, telecommunications[4], media (electronic and printed), casino and exhibition, movie theatres and book retailing.

<u>Media</u>

8. Johnnic group's media businesses are housed in Johncom and its associate, CTP Holdings Ltd with their major businesses comprising newspaper, magazine, book and map publishing. Its electronic media operations are conducted through Johnnic e-Ventures Ltd.

9. For the purpose of this merger we are only interested in Johnnic's media interests, which are housed in its subsidiary Johncom. Johncom's **<u>media division</u>** is involved in newspaper, magazine and digital publishing.

<u>Newspapers</u>

10. Johncom publishes the *Sunday Times*, its flagship weekly newspaper. It also owns newspapers based in the Eastern Cape cities of Port Elizabeth and East London (i.e., *Daily Dispatch*, *the Herald*, *Weekend Post* and *Saturday Dispatch*). Johncom has an 18% stake in CTP, which controls the Citizen (a daily newspaper published nationally). Having found that Johncom does not have a controlling stake in CTP, the Commission did not consider the Citizen in analysing competition issues any further.

11. Johncom, through Johnnic Publishing, publishes the *Sowetan Sunday World* **("SSW")** in partnership with NAP, each has a 50% interest in the newspaper.[5] The parties stated that SSW is targeted primarily at the black middle class and 48.3% of its readership is based in Gauteng.

12. Johncom also publishes financial newspapers and magazines (targeting readers

[2] The Commission collectively referred to the companies owned by Johnnic Holdings as "the Johnnic Group".
[3] The remainder of the shareholding in Allied is shared equally between Independent Newspapers Gauteng (Pty) Ltd ("Independent Newspapers") (33.3%) and Johncom (33.3%).
[4] Johnnic Group is involved in this sector through its 2% interest in MTN Group Ltd which operates digital cellular network services, commercial satellite signal distribution as well as internet access and managed Internet Protocol network solutions throughout Africa.
[5] See the Record (page 26) and the Commission's Report (page 4).

in the commerce, industry and government sectors) through Business Day Financial Mail Publishers ("BDFM"), in partnership with Pearson, the UK-based publishers of the Financial Times. These newspapers are *Business Day; Business Day pm; Financial Mail; Summit TV and PR Newswire*.

Magazines

13. Johncom produces a wide range of magazine titles spanning business, consumer and medical publishing. Leading titles include Elle, SA Home Owners, Longevity and Computing SA.

Digital

14. Johncom conducts this business through 3 business units:

- *I-Net Bridge*: the leading SA electronic provider of financial & business information;
- *CareerJunction*: an online recruitment service; and
- *Trade World*: an electronic trading hub.

15. Johncom's **retailing division** comprises Exclusive Books[6], the Nu Metro chain of cinemas and the IMAX experience.

NAP

16. NAP is a holding company whose subsidiaries are primarily involved in publishing newspapers and magazines. NAP is also involved in the production of television programmes. A brief description of these activities appears below.

Newspapers

17. NAP holds a 100% shareholding in the *Sowetan*, a daily newspaper. During the course of its investigation the Commission found that although the Sowetan is published on a nationwide basis it is primarily circulated in the Gauteng, Kwazulu-Natal, Mpumalanga, the Free State and the Limpopo provinces. NAP, also has a 50% shareholding in the *SSW*, a weekly tabloid[7] newspaper, which as mentioned above it owns jointly with Johncom. These two newspapers cater primarily for a black readership.

Magazine publishing

18. NAP's involvement in this area is through its wholly owned subsidiary New Africa Publications Magazines Ltd which publishes Leadership Magazine, a monthly magazine which focuses on current, political and business related issues.

19. We were informed that NAP's magazine business would not form part of the proposed transaction as it would be sold to an unrelated - independent - third party (prior to the implementation of this transaction). This would, the Commission

[6] Exclusive Books is a retailer of a range of books, magazines and newspapers.

[7] A "tabloid newspaper" is defined as a newspaper whose content is populist in style and contains very little informative news. A tabloid has pages half the size of the average paper, characterised by bold headlines and large photographs.

submitted, eliminate the overlap between the businesses of the parties in this market.[8]

Advertising sales

20. NAP partakes in advertising sales through Thengisa Media, its own in-house advertising division.

Distribution

21. As intimated above, NAP has a 33.3% in Allied, a company responsible for the distribution of the Sowetan, SSW and Nail's other publications. Johncom and Independent Newspapers hold 33.3% shares each in Allied.

22. The shareholders agreement gives pre-emptive rights to the other shareholders in the event that any shareholder wants to sell its shares. We are advised that Independent Newspapers will exercise its pre-emptive rights so that the net effect of the transaction is that Allied will now be jointly controlled by Independent and Johncom each having a 50% stake in the company.

Television

23. NAP's involvement in television is through its wholly owned subsidiary Sowetan Television (Pty) Ltd ("Sowetan Television"), which produces local television shows.

The relevant product market

24. The merger raises both horizontal and vertical issues in the print media and the sale of advertising space markets. The horizontal issues involve an overlap between NAPs' ownership of the Sowetan and the Sowetan Sunday World and Johncom's ownership of the Sunday Times, Daily Dispatch and the Herald.

25. The vertical issues come about as a result of Johnnic's stake in Allied, a distribution company for newspapers and magazines. Prior to this merger, each of Johnnic, NAP and Independent Newspapers had a 33.3% stake in Allied. Allied also distributes newspapers for each of these shareholders.

Competition analysis

26. We turn to consider these concerns below.

Vertical perspective

27. Allied is a major distributor of newspapers and carries all the Johnnic, Independent Newspapers' and Nail publications as well as those of third parties.

28. Prior to this merger NAP, Johnnic and Independent Newspapers had equal stakes in Allied. Post-merger, Allied will be jointly controlled by Johnnic and Independent Newspapers on a 50/50 basis. We have to consider whether the elimination of Nail as a shareholder will alter the incentives of Allied, and in particular, whether it may make it more likely to foreclose competitors of its controlling shareholders. The Commission contends that such joint control will prevent Johncom from exercising any foreclosure strategy. We were advised at the hearing by the

[8] See Clause 4.5 of the Sale of Shares Agreement, page 290 of the record.

merging parties that Allied distributes the newspapers of its shareholders competitors and that it has never refused to distribute a third party's newspaper.

29. The merging parties argue that Allied competes with other distribution companies for third party business and that a strategy of foreclosure, would not only be unsuccessful because of the presence of these rivals, but would also be irrational, because economies of scale are crucial in distribution and spreading the costs of distribution over a wide range of customers is vital to the profitability of the company.

30. They point out that Naspers, Allied's competitor, controls its own distribution agency and also distributes for third parties. There is also a third distribution network available in Gauteng, i.e., the Caxton distribution network which delivers the Citizen. Caxton also takes third parties on its distribution network.[9]

31. It is clear that distribution is a barrier to entry for a new publication. The fact that the distribution market is concentrated, and is characterised by vertically integrated firms means that a new entrant has to approach a firm controlled by a rival, or would be rival, for distribution. However undesirable this situation may be, this merger does not make it any worse. If Allied's shareholders wanted to foreclose third parties they could have just as easily done so prior to the merger.

Horizontal perspective

32. The horizontal issues involve an overlap between NAP's ownership of the Sowetan and the Sowetan Sunday World and Johncom's ownership of the Sunday Times, Daily Dispatch and the EP Herald. We are of the view – for reasons stated below - that this horizontal relationship is such that it is unlikely to result in a substantial lessening or prevention of competition in any of the relevant market. Newspapers seem to operate in very niche markets. This is a function not only of the geographic markets in which they operate, but other factors, which include the frequency and time of day of distribution, the demographics of the readership (including language, race and income groups at which the newspaper is targeted), and the content of the newspaper. Although the Sowetan might be regarded as a competitor to the daily newspapers in the Johnnic stable in the Eastern Cape it has a daily circulation of only 803 copies in the Eastern Cape Region.[10] The Sowetan's primary market is in Gauteng where its major competitor is the Daily Sun, a newspaper owned by the Naspers group.

33. Although, the Sunday Times and the Sowetan Sunday World are both Sunday papers with a national distribution, they are aimed at very different readers which suggests that they are not significant rivals of one another.

34. As the Commission correctly points out, media markets are typically analysed both from the point of view of the consumer, as the reader of the publication, and the consumer as a purchaser of advertising in the publication. In view of the limited competition concerns raised here it is not necessary for us to go into this more elaborate analysis.

[9] See Mr Jenkins' testimony (pages 2-5 of the transcript).
[10] The Commission's figures revealed that this market is dominated by Die Burger which has 78.9% followed by EP Herald (1.5%) and Daily Dispatch (0.9%). Given that the Sowetan sells only about 803 copies per day in the Eastern Cape, as compared to others like Die Burger which sells approximately 19 000 copies per day.

35. Based on the above information, it is very unlikely that this merger may result in the substantial lessening or prevention of competition – vertically, horizontally or otherwise – irrespective of any market delineation.

Public interests issues

36. The Freedom of Expression Institute ("FEI") made written submissions to the Commission that Johhnic is buying the Sowetan in order to "dumb down" its content so that it may compete vigorously with the Daily Sun and that this acquisition would result in a loss of one of the independent voices in the print media. The FEI did not appear before us to elaborate on its written submissions. Whilst the FEI is properly concerned with the issue of whether media mergers can lead to a lessening of independent voices in the media it has not shown that a change in the Sowetan's positioning, if there is to be one, is a necessary outcome of the merger and not something that its owners might not have done despite the merger. Nor has it been established that even if there is a change in strategy that this will lessen the number of voices in the market place in a substantial manner.

Conclusion

37. The proposed transaction does not raise any substantial public interest concerns. We accordingly agree with the Commission's submission that this transaction be approved without conditions.

_______________ 13 September 2004

Norman Manoim **Date**

Concurring: ***David Lewis and Thandi Orleyn***

For the merging parties:	Adv. Robin Pearse instructed by *Webber Wentzel Bowens* and *Edward Nathan & Friedland Corporate Law Advisers*
For the Commission:	Thulani Kunene *(Mergers & Acquisitions)*