COMPETITION TRIBUNAL OF SOUTH AFRICA

Case NO: 60/LM/May08

In the matter between

Media 24 Limited	Primary acquiring firm
And	
Uppercase Media (Pty) Ltd	Primary target firm

Panel	: D Lewis (Presiding Member); Y Carrim (Tribunal Member) and N Manoim (Tribunal Member).
Heard on	: 06 August 2008
Decided on	: 07 August 2008
Reasons Issued	: 12 September 2008

Reasons for Decision

Approval

[1] On 06 August 2008 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Media24 Limited and Uppercase Media (Pty) Ltd. The reasons appear below.

Parties

[2] The primary acquiring firm is Media24 Limited ("Media24"). Media24 is 85% owned by Naspers[1] and the remaining 15% shares are owned by Yizani representing Black Economic Empowerment interests.

[3] Media24 is involved in the business of publishing and distribution of newspapers, magazines and the internet, commercial, newspaper and magazines printing and the publishing and distribution of books.[2] Media24 is a prominent role player in the South African magazine industry and publishes a significant percentage of magazines sold at news

[1] Naspers is a public company listed on the JSE. It controls various entities including Paarl Media Holdings (Pty) Ltd ("Paarl"), Touchline Media (Pty) Ltd ("Touchline"), Multichoice South Africa Holdings (Pty) Ltd, Media24 Holdings ("Media24 Holdings") and M-Web Holdings ("M-Web").

[2] Media24 is also integrated into printing market through its subsidiary Paarl Media and is actively involved in the print distribution market through its division, NND24.

stands nationally.[3] It currently publishes more than 60 titles, several of them in conjunction with other publishers or in terms of licensing agreements with international titles. Media24's subsidiary Touchline Media (Pty) Ltd ("Touchline") also publishes *Men's Health* through a joint venture with Rodale INC ("Rodale").[4]

[4] The primary target firm is UpperCase Media (Pty) Ltd ("UCM"). UCM is a joint venture established between Media24 and Emap Overseas Ltd ("Emap") during 2000.[5] UCM is active in publication of consumer interest magazines in South Africa, with titles such as *Heat* and *FHM* published under a licence granted by Emap Consumer Media Ltd. UCM also has a digital business which attached to the titles which was launched in 2006.[6]

Transaction

[5] Media24 owns 50% of the issued share capital of UCM. The merger involves the acquisition by Media24 of the remaining 50% in UCM from Emap. In terms of the proposed transaction Emap sells to Media24 all of its claims against and shares in UCM. The effect of the agreement is that UCM that was previously under the joint control of Emap and Media24 will be under the sole control of Media24.[7]

Rationale

[6] In terms of the joint venture agreement entered into between Emap and Media24 effective from 2000, a mutual pre-emptive right was agreed to between Emap and Media24 regarding the sale of their shareholdings. Media24 is therefore exercising its right as it does not wish to own UCM jointly with another firm.

[7] For Emap the parties submit that it has reviewed its group structure and portfolio of assets which includes radio, consumer magazines and business to business assets and has decided to sell its entire consumer facing businesses and focus on other media markets. The

[3] Media24 is also integrated into the printing market through its subsidiary Paarl Media and it is actively involved in the print distribution market through its division NND24. Naspers is involved predominantly in the media sector. Its South African business operations include pay television subscriber platforms, pay television channels, internet platforms, publication of magazines, books and newspapers and the provision of printing and distribution services.

[4] Rodale is a company registered in accordance with the laws of the United States of America.

[5] Emap is a private company incorporated in accordance with the laws of England with its registered address at 40 Bernard Street London England.

[6] The license allows UCM to publish and distribute the mentioned titles in South Africa (and neighbouring countries, for example Zimbabwe, Namibia, Botswana, Swaziland and Mozambique).

[7] At all material times UCM has been the exclusive licensee of Emap for *"FHM", "ZOO"* (the publication which has been stopped) and *Heat* magazines titles and content in South Africa.

parties further submit that the Emap stake in UCM no longer has a strategic fit with the Emap business and it was decided that it should be sold.[8]

The Commission's Recommendations

[8] As will be discussed later, the Commission concluded that the proposed transaction is likely to substantially prevent or lessen competition as it is likely to result in unilateral effects and co-ordinated conduct in the general men's interest magazines post merger. In order to mitigate these concerns the Commission has recommended that we approve this transaction subject to the following conditions:

For as long as Media24 has control over both UCM and Rodale and Touchline Publishers, and has a right through these or any other entities to publish FHM and Men's Health:

1. *The merged entity ("UCM") shall operate as an independent and distinct entity from other Media24 (Pty) Ltd ("Media24") business units responsible for publishing magazines in the market for general men's interest magazines. There shall be no sharing with or disclosure to any other Media24 business unit of any FHM's ideas, strategies, launch plans, unpublished editorial, financial information or similar confidential or proprietary information and vice versa;*

2. *The editorial and publishing offices of the South African editions of Men's Health and FHM shall be physically located in two different buildings.*

3. *UCM shall not offer employment or engagement as a freelancer to any person formerly employed by or rendering freelance services to Men's Health and vice versa for a period of two years.*

4. *The Competition Tribunal may on good cause shown lift, revise, or amend these conditions upon being approached either by the Commission or by the merging parties.*[9]

Market Definition

[9] According to the Commission there is an overlap in the activities of UCM and Media24 in the market for the publication of consumer magazines, in particular the market

[8] The Emap board had initially decided to sell its entire consumer facing business to Bauer (a German company), but Bauer declined.
[9] See page 32 of the Commission's report.

for general men's interest magazines and celebrity magazines. In the market for general men's interest magazines the overlap occurs with respect to *Men's Health* and *FHM* and in celebrity magazines the overlap occurs between *Heat* and *People.*[10] When assessing the general men's interest market the Commission looked at several markets but narrowed the market to consumer magazines and further narrowed it to general men's interest magazines. The Commission is of the view that, on the basis of information received from customers, competitors and strategic documents of the merging parties, there is recognition of the broader market of "men's interest magazines" that includes *Men's Health, FHM, GQ, Sports Illustrated, Popular Mechanics* and others. The Commission however found that it is also evident that the market can be further delineated into the general men's interest magazine segment, a market that includes only the closest competitors of *FHM*, namely *Men's Health* and *GQ*.

[10] The Commission also examined the narrowest celebrity market where *Heat's* closest competitor in this niche market is a Caxton publication, *People* magazine. At the hearing the Commission submitted that the purpose for narrowing this market was to look at where competitive rivalry occurs. According to the Commission if there is any competitive constraint on *Heat* it is not from a broader market, which contains more Media24 titles, but from *People* a Caxton publication.[11] The Commission however did not conclude on the definition of the relevant market but concluded that on the basis of evidence gathered during its investigations, the most direct competition to *Heat* magazine comes from the Caxton publication *People*.

[11] The Commission defines the geographic market as national. We agree with this definition.

Competition Analysis

[12] As outlined above the Commission found that the merger would increase the likelihood of both unilateral and co-ordinated effects. We examine these below.

[13] The Commission further found that barriers to entry are high and that advertising customers have some degree of countervailing power.

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[10] Men's Health, FHM and Heat are published under a license from international companies EMAP and Hearst respectively.
[11] See page 7 of the transcript.

[14] The *prima facie* indicators of likely unilateral effects are pre and post merger market shares. In this case the Commission relied on modified HHIs[12] in order to assess the likelihood of unilateral effects. The Commission's calculations revealed an increase of the MHHI from 2,746 pre merger to 3,949 post merger, which represents an accretion of 1,203. The Commission calculated pre merger MHHI by assigning 50% of the market share of each joint venture to each participant in the joint venture. Media24's pre merger market share is 37.35%, Rodale's is 21.25%, UCM's is 16.1% and Conde Naste has 25.3%. Therefore the Commission concluded that the merging parties post merger market share is 54% in the market for general men's interest magazines with a market share accretion of 17%. In the market for celebrity magazines, the Commission found that the merged entity would have a post merger market share of approximately 50%. The Commission argues that the pre and post merger MHHI would be 3742 and 5000 respectively, which represents a change in MHHI of 1258. The Commission found that the proposed transaction would lead to the creation or enhancement of market power for the merged entity. The Commission also concluded that the affected markets are highly concentrated.

[15] The Commission also avers that another potential consequence of this merger is that the merger will make the market more conducive for co-ordinated effects. In order to dispel concerns that the proposed transaction will result in co-ordinated conduct involving Media24, the parties submit that Media24 magazines are independently run by management through a cluster system. As an alternative argument, they contended that the merger would not make the possibility of unilateral or co-ordinated effects any more likely than it was pre-merger.[13] The Commission however, argues that this structure may result in ineffective rivalry between the clusters for advertising and circulation revenues. The Commission submits that, this transaction would provide Media24 with the opportunity to place *FHM* and *Heat* in clusters which could include close competitors of both. For example Media24 could place *FHM* in a cluster with *Men's Health,* its closest competitor. The Commission argues that this could undermine the rivalry between these two titles as information about discounts to advertisers for placing adverts could be shared, reducing the potential for advertisers to play the titles off against one another. However the parties submit that Media24 does not have a free hand regarding the publication of "*FHM"* and "*Heat"* as it remains constrained by the terms of the licence agreement with the licensor of these titles. The licensee in this case was UCM and

[12] HHI refers to the Herfindahl- Hirschman Index which is defined as the sum of the squared market shares of all firms in the market. It was developed to measure concentration ratios in a relevant market. If a merger results in a change in HHI of more than 100 basis points, the South African competition agencies take a closer look at the possible competition effects of such a transaction. Timothy F Bresnahan and Steven C Salop developed modifications to the standard HHI for analysis of some types of partial ownership acquisitions. See " *Quantifying the competitive effects of production joint ventures*" 4 INT'L J. INDUS. ORG.155 June 1986

[13] See page 16 of the transcript.

not Media24. The parties submitted that the licence agreement provides that the quality of the licensee publications with respect to editorial content, advertising, form and presentation of material shall be in accordance with the standards set out, from time to time, by the publisher of the title in the brand book. Furthermore the licence also prescribes specifications in terms of the book size, paper stock and advertising: editorial ratio. Post merger the licence agreement will still be in place and UCM will continue to be bound by it irrespective of whether Media24 was in joint or sole control of UCM. Therefore, Media 24 would not, post merger have a free hand to do as it pleased regarding the publication of *FHM* and *Heat* as it would remain constrained by the terms of the licence agreement with the licensor of these titles.[14]

[16] In our view this merger is unlikely to increase the likelihood of co-ordination in the general men's interest market since post merger the business of UCM will be conducted as before. Although Media24 will have sole control by virtue of the fact that it would own 100% of the share capital in UCM, Emap or its successor would still be there and the licence agreements would continue to exert sufficient constraints on Media24. We are therefore of the view that this transaction does not warrant the imposition of the condition by the Commission.

[17] The Commission also found that the merger has a vertical effect, but none that raises any competition concerns. According to the Commission the vertical integration occurs in that Media24 renders administration, HR, IT, advertising, printing, circulation and subscription services on behalf of UCM. Furthermore NND24 and Paarl, the divisions of Media24 provide printing and distribution services to UCM. An examination of the vertical integration by the Commission revealed that the relationship between the merging parties existed pre merger and will continue unchanged post merger. According to the Commission the target firm did not utilize the said services from any other firm except for the acquiring group. We therefore agree with the Commission's conclusion that no foreclosure concerns arise as a result of the proposed transaction.

[18] In our view the Commission's concerns appear to be driven less by the effects of this particular transaction, than by Media 24's pre-eminent position in the magazine market. While these concerns may be well-founded and may dictate that the Commission pays close attention to Media 24's conduct in this market, we do not believe that this transaction materially enhances that established position and so there is no warrant for finding that it will substantially lessen competition

[14] See page 38 of the record.

Conclusion

[19] There are no public interest issues. Accordingly the transaction is unconditionally approved.

____________________ **12 September 2008**

Y Carrim **Date**

Tribunal Member

D Lewis and N Manoim concurring

Tribunal Researcher	: Jabulani Ngobeni
For the merging parties	: Jan S. De Villiers
For the Commission	: Edwina Ramohlola (Mergers and Acquisitions)