



competitiontribunal
south africa

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO290Feb18

In the matter between:

The Competition Commission

Applicant

And

Provantage (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member)
F Tregenna (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 14 March 2018

Decided on : 19 March 2018

Consent Agreement

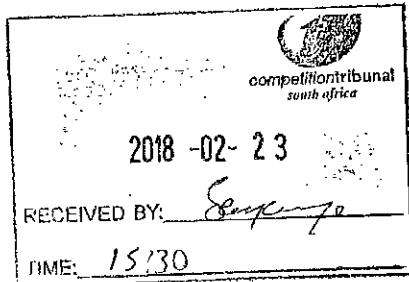
The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Provantage (Pty) Ltd annexed hereto marked "A".

Presiding Member
Ms Yasmin Carrim

19 March 2018
Date

Concurring: Prof Fiona Tregenna and Mrs Medi Mokuena

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



CT CASE NO: *CO290Feb18*
CC CASE NO: 2011Nov5779
/ 2015dec0695

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA Applicant

and

PROVANTAGE PROPRIETARY LIMITED Respondent

FILING NOTICE

BE PLEASED TO TAKE NOTICE that the Applicant hereby files the consent agreement concluded between the Competition Commission and the following Respondent:

1. Provantage (Pty) Ltd

SIGNED AND DATED AT PRETORIA ON THIS 23 DAY OF FEBRUARY 2018.



COMPETITION COMMISSION

DTI Campus, Block C, Mulayo Building

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 762 6950

Ref: Provantage - K Modise/T Ramoshaba

E-mail: KhotsoM@compcom.co.za

TshepoR@compcom.co.za

TO: THE REGISTRAR

Competition Tribunal

The DTI Campus, 1st Floor

Block C, Mulayo Building

77 Meintjies Street

Sunnyside, Pretoria

Tel: (012) 394 3300/55

Fax: (012) 394 0169

E-mail: leratom@comptrib.co.za

Email: Ndumison@comptrib.co.za

AND TO: Baker & McKenzie Attorneys

Respondent Attorneys

Leana Engelbrecht

39 Rivonia Rd

Block 1, Commerce Square

Sandhurst

Johannesburg

Tel: 011 911 4409

Cell: 27 82 555 3804

E-mail: Leana.Engelbrecht@bakermckenzie.com



competitiontribunal south africa

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Form continues on Page 2.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

Date: 23 February 2018

To: the Registrar of the Competition Tribunal, and:

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

Provantage (Pty) Ltd

Concerning:

(Complaint name and Commission file number:)

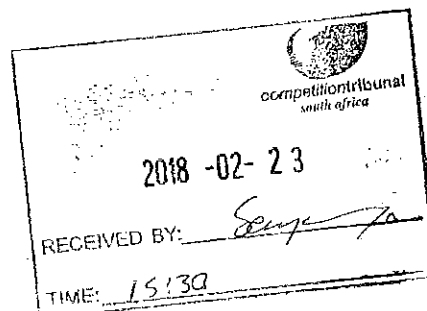
2011NOV5779 & 2015DEC0695

From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(i) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

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





competitiontribunal south africa

Form GT1(1) Page 2 About this Form

This form is issued in terms of section 50 of the Competition Act.

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Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Contacting the Tribunal

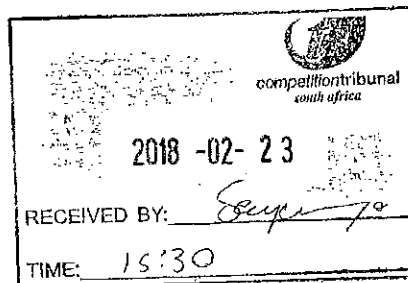
The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
Tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

Confirmation of the attached consent agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 59(1)(b) of the Competition Act 1998 (Act 89 of 1998) as amended ("The Act") in respect of a contravention of section 4(1)(b)(i) of the Act.



This referral is to proceed as a consent proceeding.

This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

Bukhosibakhe Majenge: Chief Legal Counsel

Authorised Signature:

[Signature]

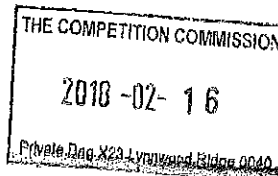
"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

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

In the matters between:

THE COMPETITION COMMISSION



APPLICANT

and

PROVANTAGE PROPRIETARY LIMITED

RESPONDENTS

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998 (AS AMENDED), BETWEEN THE COMPETITION COMMISSION AND PROVANTAGE (PTY) LTD IN RESPECT OF A CONTRAVENTION OF SECTIONS 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998

The Competition Commission and Provantage (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of Section 49D as read with Sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b)(i) of the Act, on the terms set out below.

1. DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.2 "Accredited Media Agents" means advertising agents endorsed by MCC through Corex and have provided security to MCC. MCC holds securities for its

members (media owners) on behalf of an accredited media agency.

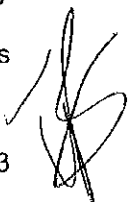
- 1.3 **"Black People"** bears the same meaning as that set out in section 1 of the Broad Based Black Economic Empowerment Act 53 of 2003 as amended;
- 1.4 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.5 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6 **"Complaints"** means the complaints initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case numbers 2011Nov5779 and 2015Dec0695 and 2017Oct0028;
- 1.7 **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Provantage (Pty) Ltd;
- 1.8 **"CoreX"** means Corexalance, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Building A, Office 103, Cresta Junction, Cnr of Beyers Naude and Judges Street, Cresta, Gauteng;
- 1.9 **"Economic Development Fund"** means the fund referred to in paragraph 7.2 below;
- 1.10 **"Economic Development Fund Manager"** means Media Development And



Diversity Agency;

- 1.11 **"MDDA"** means Media Development and Diversity Agency, a juristic person established in terms of section 2 of the Media Development and Diversity Agency Act no 14 of 2002, as amended, with its principal place business address at 1st Floor, 5 St Davids Place, Parktown, Johannesburg, Gauteng;
- 1.12 **"MCC"** means the Media Credit Co-ordinators, a non-profit company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Building A, Office 103, Cresta Junction, Cnr of Beyers Naude and Judges Street, Cresta, Gauteng;
- 1.13 **"MCC Members"** means media owners that have subscribed with MCC and are active in the provision of advertising space;
- 1.14 **"Provantage"** means Provantage (Pty) Ltd, a company registered in terms of the laws of the Republic of South Africa and having its principal place of business at Republic Road, Bordeaux, Randburg, Gauteng.
- 1.15 **"Qualifying Small Agencies"** means those agencies which meet the criteria set out in the Broad Based Black Economic Empowerment Act 53 of 2003 and the codes of good practice issued thereunder;
- 1.16 **"Small Agencies"** means media or media related agencies or organisations with a turnover not exceeding R50 000 000 (fifty million rand) and which are majority owned by Black People;
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business



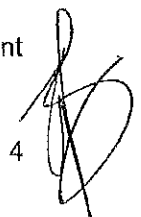
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at 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

- 2.1 In November 2011, the Commission initiated a complaint in terms of section 49(B)(1) of the Act (under case number 2011Nov5779) against Avusa Media Limited ("**Avusa**"), Caxton Community Newspapers Limited ("**Caxton**"), Independent Newspapers Proprietary Limited ("**Independent News**"), Media24 Limited ("**Media 24**"), Radmark Proprietary Limited ("**Mediamark**") (collectively, the "respondents") and MCC.
- 2.2 In December 2015 (under case number 2015Dec0695) the Commission expanded the initial complaint to include 24 additional respondents.
- 2.3 The allegations against the respondents are that:
- 2.3.1 through the medium of the MCC, the respondents agreed to offer similar discounts and payment terms to advertising agencies that place advertisements with MCC members. For accredited agencies, the discount offered is 16.5% for all payments made within 45 days of the date of the statement while for the most part the discount offered to non-accredited agencies is 15% for payments made within the same period.
- 2.3.2 The respondents as members of the MCC employ services of an intermediary company called Corex to perform the risk assessment on advertising agencies for purposes of imposing the above settlement



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discount structure and terms on advertising agencies.

- 2.3.3 The Commission found that the above mentioned practices by the respondents gave rise to a restriction of competition amongst competing respondents in that they did not independently determine an element of a price in the form of discount or trading terms. These practices amount to price fixing and the fixing of trading conditions in contraventions of section 4(1)(b)(i) of the Act.

3. ADMISSION OF LIABILITY

Provantage admits that it engaged in the prohibited practices set out in clause 2 above in contravention of sections 4(1)(b)(i) of the Act.

4. CO-OPERATION

Insofar as the Commission is aware, Provantage:

- 4.1 has provided the Commission with truthful and timely disclosure, including information in its possession or under its control, relating to the prohibited practices;
- 4.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practices;
- 4.3 has ceased to engage in the prohibited practices and has also ceased to be a member of the MCC;
- 4.4 has not destroyed, falsified or concealed information, evidence and



documents relating to the prohibited practices; and

- 4.5 has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

5. FUTURE CONDUCT

Provantage agrees and undertakes to:

- 5.1 provide the Commission with full and expeditious co-operation from the time the Consent Agreement is concluded until the subsequent proceedings in the Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:
- 5.1.1 to the extent that it is in existence and has not yet been provided, providing evidence, written or otherwise, which is in its possession or under its control, concerning the contraventions in this Consent Agreement; and availing its employees to testify as witnesses for the Commission in any cases regarding the contraventions contained in this Consent Agreement;
- 5.1.2 prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 5.1.3 refrain from engaging in conduct which contravenes section 4(1)(b) of



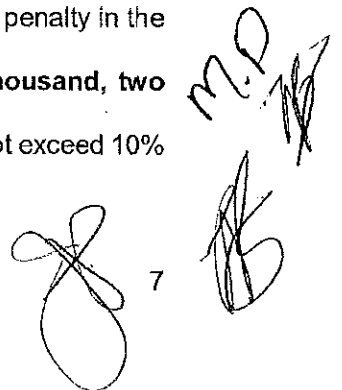
the Act, and from engaging in any prohibited practice in future;

- 5.1.4 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 5.1.5 submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal;
- 5.1.6 actively endeavour to put in place measures to facilitate the ability of Small Agencies to transact with Provantage, as set out in paragraph 7 of this Consent Agreement.

6. ADMINISTRATIVE PENALTY

- 6.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, Provantage is liable to pay an administrative penalty.
- 6.2 Provantage agrees and undertakes to pay an administrative penalty in the amount of **R1,094,222.56** (one million and ninety-four thousand, two hundred and twenty-two and fifty six cents) which does not exceed 10%
^

M.P.
7



(ten percent) of Provantage's annual turnover in the Republic of South Africa for its financial year ended 2016.

6.3 Provantage shall pay the amount set out above in paragraph 6.2 to the Commission in four equal instalments of **R273,555.64** (two hundred and ^{thousands} ~~seventy-three thousand five hundred and fifty-five~~ and [^] ~~sixty four cents~~), the first payment being made within 30 (thirty) days from the date of confirmation of this Consent Agreement as an order of the Tribunal. The remaining three instalments being paid in equal parts every three months following the first instalment.

M.D.
AS

6.4 The administrative penalty shall be paid into the Commission's bank account, details of which are as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

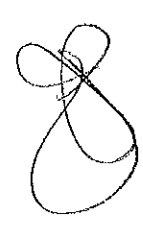

Branch Code: 323 345


Ref: 2015Dec0695/Provantage

6.5 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

7. OTHER REMEDIES

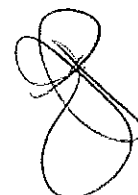
7.1 SMALL AGENCY PARTICIPATION

 
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7.1.1 Further, Provantage undertakes to provide either (i) a 25% (twenty five percent) in bonus advertising space; or (ii) 25% (twenty five percent) discount for every Rand of advertising space bought by all Qualifying Small Agencies. The bonus advertising space or discount will be utilised at times scheduled at the discretion of Provantage, which discretion shall be reasonably exercised, taking into account the nature of the advertising medium on which the advertising space is purchased, the advertising space package purchased, the target audience and advertising requirements of the clients of Qualifying Small Agencies. Provantage will offer these terms for a period of 3 (three) years from the date of confirmation of this Consent Agreement, subject to a total annual advertising space cap of **R2,800,000 (two million eight hundred thousand)**.
rouds *M. D. D. D.* 

7.1.3 Provantage undertakes to publish the terms in paragraph 7.1.1 of the Consent Agreement using national media that has a reach to Qualifying Small Agencies within 10 (ten) business days from the date of confirmation of this Consent Agreement as an order of the Tribunal, inviting all Qualifying Small Agencies to participate. Provantage will thereafter publish these terms every year on the anniversary of the first publication for a period of 3 (three) years.


7.1.4 Provantage undertakes to provide the Commission with a written report in respect of the utilisation of the 25% bonus advertising space

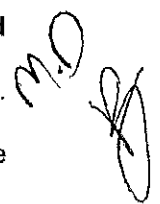


or 25% discount on advertising space by Qualifying Small Agencies. Such report shall include information on the number of Qualifying Small Agencies who have utilised the bonus advertising space or discount on advertising space, as well as the names, contact details and the Rand value of the bonus advertising space or discount on advertising space received by each Qualifying Small Agency.

7.1.5 Provantage shall submit such report 1 (one) month after every 6 (six) month period from the date of confirmation of this Consent Agreement, for a period of 3 (three) years.

7.2 ECONOMIC DEVELOPMENT FUND

7.2.1 Provantage undertakes to contribute an amount of **R393,920.12** (three hundred and ninety-three thousand nine hundred and ^{rand} twenty and twelve cents) over a period of 3 (three) years from the date of confirmation of this Consent Agreement to the Economic Development Fund to enable the development of Qualifying Beneficiaries. 

7.2.2 Provantage undertakes to make 3 (three) equal contributions of **R 131,306.70** (one hundred and thirty one thousand three hundred and ^{rand} six and seventy cents) into the Economic Development Fund. The first contribution is payable within 3 (three) months from the date of confirmation of this Consent Agreement and thereafter make the 



second and third contributions at the anniversary of the first.

7.2.3 These contributions shall be made into an account created and managed by MDDA.

7.2.4 The Qualifying Beneficiaries are Black People and include the following:

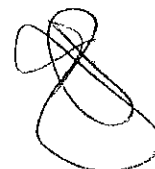
7.2.4.1 students requiring bursaries to study media or advertising qualifications at tertiary institutions;

7.2.4.2 individuals requiring assistance to acquire necessary post-qualifications experience to participate in the advertising industry;

7.2.4.3 individuals requiring assistance with sponsorship for mentoring or training in areas of media and/or advertising business fundamentals including working capital management, capitalisation and HR processes;

7.2.4.4 black owned small media or advertising agencies requiring assistance with start-up capital;

7.2.5 The Economic Development Fund will be managed and administered by the MDDA and will be subject to annual audits by an auditing firm. MDDA shall submit an audited report relating to the management and administration of the activities of the Economic Development Fund to



the Commission within 3 months of the completion of the audit.

7.2.6 In addition, the MDDA shall provide the Commission with a written report in respect of the utilisation of the contributions made by Provantage to the Economic Development Fund, including the number of Qualifying Beneficiaries who derived benefits from such contributions, as well as the names, contact details and the Rand value of the benefits received by Qualifying Beneficiaries. Such report shall be submitted every 6 (six) months for a period of 3 (three) years.

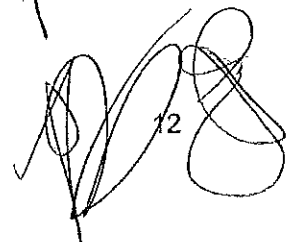
7.2.7 In accordance with clause 4.1 of the MDDA agreement, MDDA shall publish the terms in paragraph 7.2 of this Consent Agreement using national media that has a reach to Qualifying Beneficiaries within 3 (three) months from the date of confirmation of this Consent Agreement as an order of the Tribunal.

8. FULL AND FINAL SETTLEMENT

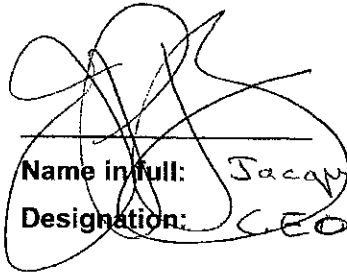
This agreement is entered into in full and final settlement of all conduct engaged in by Provantage with its competitors as set out in paragraph 2 of this Consent Agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Provantage in this regard.

For Provantage (Pty) Ltd

Date and signed at Randburg on the 14 day of February 2018



AND initialing changes



Name in full:

Jacques Pieter Du Preez

Designation:

CEO

M. Dain

Deputy CEO
Mabisi Neliwe

For the Commission

Date and signed at

PRETORIA

on the

2nd

day of

February 2018



TEMBINKOSI BONAKELE
COMMISSIONER



13