



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR084Aug16/SA111Jun18

In the matter between:

The Competition Commission

Applicant

And

Natal Witness Publishing and
Printing Company (Pty) Ltd

Respondent

Panel : E Daniel (Presiding Member)
F Tregenna (Tribunal Member)
A Roskam (Tribunal Member)

Heard on : 22 August 2018
Addendum filed : 5 October 2018
Decided on : 8 October 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Natal Witness Publishing and Printing Company (Pty) Ltd annexed hereto marked "A" and addendum marked annexure "B".


**Presiding Member
Mr Enver Daniels**

8 October 2018
Date

Concurring: Prof. Fiona Tregenna and Mr Anton Roskam

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR080AUG16

CC CASE NO: 2012OCT0611

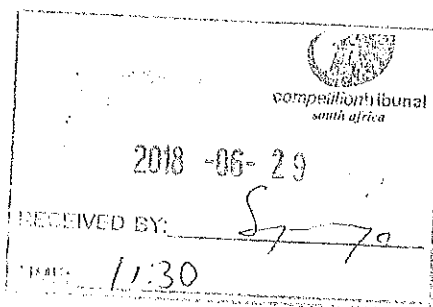
In the matter between:

THE COMPETITION COMMISSION

and

NATAL WITNESS PUBLISHING AND PRINTING

COMPANY (PTY) LTD



Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND NATAL WITNESS PUBLISHING AND PRINTING COMPANY (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (ii) OF THE COMPETITION ACT, 1998.

The Competition Commission and Natal Witness Publishing and Printing Company (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 read with sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998,

as amended, in respect of a contravention of section 4(1)(b)(ii) 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 "Caxton" means Caxton and CTP Publishers and Printers Limited, a public company registered in terms of the laws of the Republic of South Africa with its principal place of business situated at 28 Wright Street, Industria West, Johannesburg, Gauteng Province;
- 1.3 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 "Commissioner" means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.5 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under Case number 2012Oct0611;
- 1.6 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Natal Witness;
- 1.7 "Lincroft Books" means Lincroft Books (Pty) Ltd, a joint venture established in or about 1997 between Hometalk Publishers CC, Natal



Witness and Caxton, whose business comprised the publication and distribution of *Village Talk*, a community newspaper distributed in the small town of Howick, KwaZulu-Natal.

- 1.8 "Natal Witness" means Natal Witness Publishing and Printing Company (Pty) Ltd, a company registered in terms of the laws of the Republic of South Africa with its principal place of business situated at 45 Willowton Road, Willowton, Pietermaritzburg, KwaZulu-Natal province;
- 1.9 "Parties" means the Commission and Natal Witness;
- 1.10 "Respondents" means Natal Witness and Caxton;
- 1.11 "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 at Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 INVESTIGATION AND FINDINGS OF THE COMMISSION

- 2.1 On 12 October 2012, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Natal Witness and Caxton for allegedly dividing markets by allocating territories in contravention of section 4(1)(b)(ii) of the Act. Both Caxton and Natal Witness compete in the market for the publication and distribution of community newspapers.



- 2.2 The conduct that is the subject matter of the Commission's investigation and complaint referral arose out of the activities of the Respondents as joint venture partners in Lincroft.
- 2.3 As parties to this joint venture, Natal Witness and Caxton undertook to act in their "mutual best interests and in the best interests of" the joint venture, which the Commission's investigation concluded amounts to an agreement to divide the market for the publication and distribution of community newspapers by allocating territories amongst each other in the Howick area.
- 2.4 The Commission concluded that the agreement was that Caxton and Natal Witness will not introduce further community newspapers in the Howick area. (Natal Witness published and distributed a community newspaper called the Echo in the area of KwaZulu-Natal, including the Howick area. Caxton published and distributed the Maritzburg Sun which circulated in the neighbouring town of Pietermaritzburg, but not in the Howick area.)
- 2.5 In 2005, Caxton's Maritzburg Sun community newspaper publication started circulating in the Howick area. At a board meeting of Lincroft in May 2005, a Natal Witness representative asked whether this circulation was in breach of Clause 17 of the Lincroft's shareholder's agreement to "*at all times act both their mutual interests and in the best interests of the Company with respect to the business.*" Natal Witness'



objection was that Caxton was acting in bad faith towards the Lincroft joint venture to which they were part of.

2.6 Clause 17 of the Lincroft Shareholder's agreement stipulates that:

Clause 17.1: "It is acknowledged that the continued growth of the Company and the Business will be for the ultimate benefit of all the Shareholders and they accordingly undertake at all times to act both their mutual interests and in the best interests of the Company with respect to the business. (own emphasis)

Clause 17.2: "The Shareholders undertake that in all their dealings arising out of this Agreement or their association in the Company, they will exercise the utmost good faith towards each other as well as towards the Company". (own emphasis)

2.7 Caxton's representative undertook to raise the issue with Caxton's senior management and did not respond at that board meeting. The issue of the circulation of Maritzburg Sun in the Howick area was accordingly raised again in the board meeting of Lincroft on 5 August 2005 after the Tribunal divestiture order in relation to Natal Witness's shareholding in Lincroft in terms of the 2005 Media24/Natal Witness large merger). It was resolved that Caxton would withdraw its publication, Maritzburg Sun, from the Howick area in keeping with clause 17 of the shareholders agreement between Natal Witness and Caxton.



2.8 The Commission concluded that, when the issue was raised again in the board meeting of Lincroft on 5 August 2005 post the Tribunal divestiture order, it was once again raised to protect the interests of Natal Witness, which was at the time no longer a party to the Lincroft joint venture as Natal Witness had disposed of its shares to Lexshell. Lexshell, which supposedly held shares in Lincroft, never concluded any form of agreement, including shareholders agreement with Caxton regulating their relationship in Lincroft and as such could not rely on clause 17 of the Lincroft Shareholder's agreement.

2.9 After withdrawing the Maritzburg Sun from the Howick area following the resolution of the Lincroft board meeting of 5 August 2005, Caxton never attempted to introduce a community newspaper again in the area of Howick.

2.10 The understanding not to introduce any other newspaper title in the Howick area persisted until 2012 when Caxton terminated its relationship with Lincroft and began assisting a competing newspaper uMgeni Ayethu in the Howick area with advertising.

2.11 This conduct amounts to the division of markets by allocating territories in contravened section 4(1)(b)(ii) of the Act.

3 ADMISSION

Natal Witness admits that it engaged in the prohibited practices set out in clause 2 above in contravention of section 4(1)(b)(ii) of the Act.



4 CO-OPERATION

Insofar as the Commission is aware, Natal Witness:

- 4.1 has provided the Commission with truthful and timely disclosure, including information in its possession or under its control, relating to the prohibited practice;
- 4.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practice;
- 4.3 has ceased to engage in the prohibited practice. The conduct persisted until 2012 when Caxton introduced Village Talk to the area.
- 4.4 has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practice; 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

Natal Witness agrees and undertakes to:

- 5.1 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;



- 5.2 refrain from engaging in conduct which contravenes section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;
- 5.3 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; and
- 5.4 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.

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, Natal Witness is liable to pay an administrative penalty.
- 6.2 Natal Witness agrees and undertakes to pay an administrative penalty of R255 528 (Two hundred and fifty five thousand five hundred and twenty eight rands only) which does not exceed 10% (ten percent) of Natal Witness's annual turnover for the financial year ended March 2016.



6.3 Natal Witness shall pay the amount mentioned in 6.2 above to the Commission within 30 (thirty) days from the date of confirmation of the consent agreement by the Tribunal;

6.4 The payment shall be made into the Commission's bank account, details of which are as follows:

Bank Name: Absa Bank

Branch Name: Pretoria

Account holder: The Competition Commission Fee Account

Account Number: 4050778576

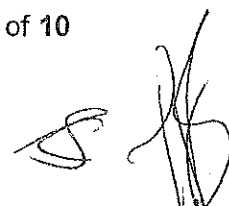
Branch Code: 323 345

Reference: 2012Oct0611/Natal Witness

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

7 Full and Final Settlement

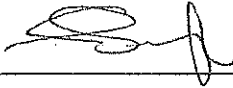
7.1 This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2012Oct0611 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Natal Witness relating to

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the conduct that is the subject of the Commission's investigation under
Case No. 2012Oct0611.

Dated and signed at CAPE TOWN on the 25 day of June 2018

For Natal Witness Printing and Publishing Company

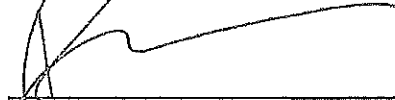


~~Chief Executive Officer~~ & ~~DIRECTOR~~

Name in Full: Cement Singh

Dated and signed at PRETORIA on the 28 day of June 2018

For the Commission



TEMBINKOSI BONAKELE
COMMISSIONER

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No. CR084Aug16/SA111Jun18
CC Case No. 2012Oct0611

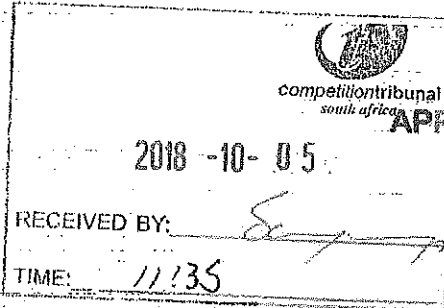
In the matter between:-

THE COMPETITION COMMISSION

and

NATAL WITNESS PUBLISHING AND PRINTING
COMPANY (PTY) LTD

RESPONDENT



**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND NATAL WITNESS PUBLISHING AND
PRINTING COMPANY (PTY) LTD DATED 28 JUNE 2018**

It is hereby recorded, by agreement between the parties, that the consent agreement concluded between the Competition Commission and Natal Witness Publishing and Printing Company (Pty) Ltd on 28 June 2018 (the "Consent Agreement"), is amended as set out below.

1. AD PARAGRAPH 4 (CO-OPERATION)

The parties wish to amend –

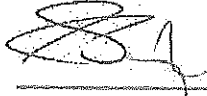
Clause 4.3 by deleting the reference to "Village Talk to" in the second line and substituting it with "began assisting uMgeni Ayethu with advertising in".

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used

In this addendum shall bear the meaning ascribed to them in the Consent Agreement.

For Natal Witness Publishing and Printing Company (Pty) Ltd

Date and signed at Cape Town on the 28th day of August 2018.



Name in full: Clement Singh

Designation: Director

For the Commission

Date and signed at Pretoria on the 3rd day of October 2018.



**TEMBINKOSI BONAKELE
COMPETITION COMMISSIONER**