



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR294Feb18/SA226Dec18

In the matter between:

The Competition Commission

Applicant

And

SABC (SOC) Ltd

Respondent

Panel : N Manoim (Presiding Member)
E Daniels (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 27 February 2019

Decided on : 27 February 2019

Settlement Agreement

The Tribunal hereby confirms the settlement agreement, proposed by the Competition Commission and SABC (SOC) Ltd, annexed hereto as Annexure A, as well as the addendum to the settlement agreement marked as Annexure B.



Presiding Member
Mr Norman Manoim

27 February 2019
Date

Concurring: Mr Enver Daniels and Ms Mondo Mazwai

ANNEXURE "A"

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

CT CASE NO: CR294Feb18/SA226Dec18

CC CASE NO: 2011Nov5779

2015Dec0695/2017Oct0028

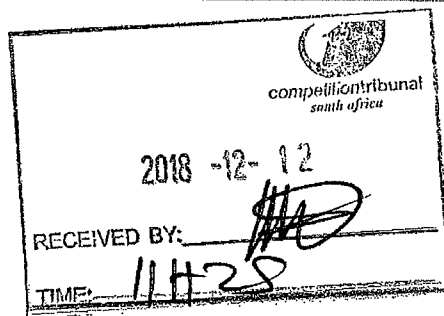
In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

SABC (SOC) LTD



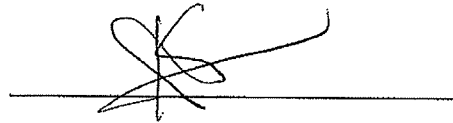
Respondent

FILING SHEET

PLEASE TAKE NOTICE that the Applicant herewith files the following documents:

1. CT 6 form;
2. Consent Agreement between the Competition Commission and SABC (SOC) Ltd

SIGNED AND DATED AT **PRETORIA** ON THIS 11TH DAY OF DECEMBER 2018.



COMPETITION COMMISSION

DTI Campus, Block C, Mulayo Building

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 762 6982

Ref: K Mahlakoana

E-mail: KwenaM@compcom.co.za

ngoakom@compcom.co.za

**TO: THE REGISTRAR
THE 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: ritsieb@comptrib.co.za

AND TO: CHEADLE THOMPSON & HAYSOM INC.

ATTORNEYS FOR SABC (SOC) LTD

5th Floor

Libridge

25 Ameshoff Street

Braamfontein

Johannesburg

E-mail: palesa@cth.co.za



competitiontribunal south africa

Form CT 6

Notice of Motion

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

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

Date: 11-Dec-2018 File # CR294Feb18/SA226Dec18

To: The registrar of the Competition Tribunal

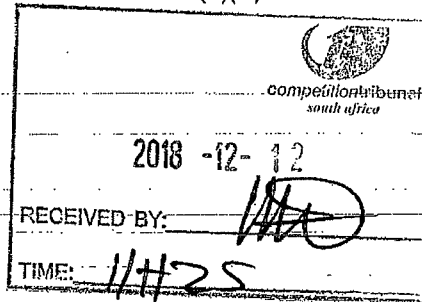
Concerning the matter between:

Competition Commission (Applicant)

and SABC (SOC) Ltd (Respondent)

Take notice that the Competition Commission intends to apply to the Tribunal for the following order:

Confirmation of the attached Consent Agreement entered into between the Competition Commission and SABC (SOC) Ltd, in respect of a contravention of section 4(1)(b)(i) of the Competition Act, No. 89 of 1998, as amended (the Act), as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(iii) and section 58(1)(b) of the Act.



Name and Title of person authorised to sign:

Authorised Signature:

Date:

[Signature]

11/12/18

For Office Use Only:

Tribunal file number:

Date filed:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA



CT Case No. CR294Feb18/SA226Dec18
CC Case No. 2011Nov5779 /
2015Dec0695 & 2017Oct0028

In the matter between:

THE COMPETITION COMMISSION

and

SABC SOC LIMITED

 competition tribunal south africa
2018 -12- 12
RECEIVED BY: 
TIME: 11:25

APPLICANT

RESPONDENT

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 SABC SOC LIMITED IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998

The Competition Commission and SABC (SOC) Limited 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 "CLP" means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No.31064 of 23 May 2008);
- 1.5 "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;
- 1.6 "Commissioner" means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.7 "Complaint" means the complaint 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;
- 1.8 "Consent Agreement" means this Agreement duly signed and concluded between the Commission and SABC SOC Limited;
- 1.9 "CoreX" means Corexalance Proprietary Limited, 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

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Naude and Judges Street, Cresta, Gauteng;

- 1.10 "Economic Development Fund" means the fund referred to in paragraph 7.2 below;
- 1.11 "Economic Development Fund Manager" means Media Development and Diversity Agency;
- 1.13 "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 of business address at 1st Floor, 5 St Davids Place, Parktown, Johannesburg, Gauteng;
- 1.14 "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;
- 1.15 "MCC Members" means media owners that have subscribed with MCC and are active in the provision of advertising space;
- 1.16 "SABC" means SABC (SOC) Limited, a state owned company incorporated under the company laws of South Africa, with its principal place of business situated at SABC, Cnr Henley and Artillery Roads, Auckland Park, Gauteng.

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- 1.17 "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;
- 1.18 "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;
- 1.19 "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 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

2. THE COMMISSION'S INVESTIGATION 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, Caxton Community Newspapers Limited, Independent Newspapers Proprietary Limited, Media24 Limited, Radmark Proprietary Limited (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,

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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 Respondents as members of the MCC employ services of an intermediary company called Corex to perform the risk assessments on advertising agencies for purposes of imposing the above settlement 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.

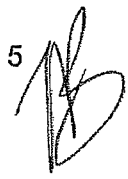
3. ADMISSION OF LIABILITY

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

4. CO-OPERATION

Insofar as the Commission is aware, SABC:

4.1 has provided the Commission with truthful and timely disclosure, including information in its possession or under its control, relating to the prohibited

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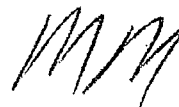
practice;

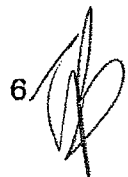
- 4.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practice;
- 4.3 has ceased to engage in the prohibited practice;
- 4.4 has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practice; and
- 4.5 has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

5. FUTURE CONDUCT

SABC 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;

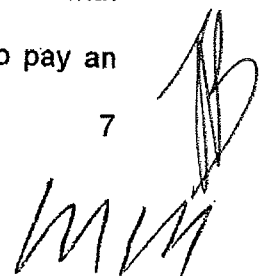


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- 5.1.2 prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 5.1.3 refrain 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 SABC, 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, SABC is liable to pay an



administrative penalty.

- 6.2 SABC agrees and undertakes to pay an administrative penalty in the amount of **R 31 845 795.33 (Thirty One Million Eight Hundred And Forty Five Thousand Seven Hundred And Ninety Five Rand And Thirty Three Cents)** which does not exceed 10% (ten percent) of SABC's annual turnover in the Republic of South Africa for the financial year ended 2016.
- 6.3 The payment shall be made in 8 equal instalments within a period of 4 years from the date of the confirmation of the Consent Agreement as an order of the Tribunal.
- 6.4 The first instalment of **R 3 980 724.42 (Three Million Nine Hundred And Eighty Thousand Seven Hundred And Twenty Four Rand And Forty Two Cents)** shall be made by the end of November 2018 and the remainder after every 6 months from the date of the first instalment.
- 6.5 No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter interest will be levied on the remaining outstanding balance at the prevailing interest rate, on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 10%.

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

Name: The Competition Commission Penalty Account

Bank: Absa Bank, Pretoria

Account Number: 4087641778

Branch Code: 323 345

Ref: 2015Dec0695/SABC

6.7 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

7.1.1 Further, SABC undertakes to provide 25% (twenty five percent) in bonus airtime for every Rand of airtime bought by all Qualifying Small Agencies. The bonus airtime will be utilised at times scheduled at the discretion of SABC, which discretion shall be reasonably exercised, taking into account the airtime package purchased, the target audience and advertising requirements of the clients of Qualifying Small Agencies. SABC 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 airtime cap of R 40 000 000 (Forty Million Rand)

7.1.2 SABC undertakes to publish the terms in paragraph 7.1 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. SABC will thereafter publish these terms every year on the anniversary of the first publication for a period of 3 (three) years.

7.1.3 SABC undertakes to provide the Commission with a written report in respect of the utilisation of the 25% bonus airtime by Qualifying Small Agencies. Such report shall include information on the number of Qualifying Small Agencies who have utilised the bonus airtime, as well as the names, contact details and the Rand value of the bonus airtime received by each Qualifying Small Agency.


7.1.4 SABC 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 SABC undertakes to contribute R17 797 645.97 (Seventeen Million Seven Hundred And Ninety Seven Thousand, Six Hundred And Forty Five Rand And Ninety Seven Cents) over 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 SABC undertakes to make 6 (Six) equal contributions of R 2 966 274.33 (Two Million Nine Hundred and Sixty Six Thousand Two Hundred and Seventy Four Rand and Thirty Three Cents) into the Economic Development Fund, The first contribution is payable by end of November 2018.
- 7.2.3 The remainder of the contribution shall be paid every 6 months from the date of the first payment for a period of 3 years.
- 7.2.4 The contribution shall be paid into MDDA's bank account, details of which are as follows:
- Name: Media Development and Diversity Agency**
- Bank: ABSA**
- Account No: 932 806 6577**
- Branch Code: 632 005**
- Ref: 2015Dec0695/SABC**
- 7.2.5 The Qualifying Beneficiaries are Black People and include the following:
- 7.2.5.1 students requiring bursaries to study media or advertising qualifications at tertiary institutions;
- 7.2.5.2 individuals requiring assistance to acquire necessary post-qualifications experience to participate in the advertising

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industry;

7.2.5.3

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;

7.2.5.4

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

7.2.6

The Economic Development Fund will be managed and administered by MDDA and will be subject to annual audits by an auditing firm. MDDA shall submit 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.

7.2.7

In addition, the MDDA shall provide the Commission with a written report in respect of the utilisation of the contributions made by SABC 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.

7.2.8

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 SABC 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 SABC in this regard.

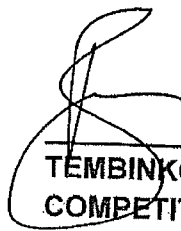
For SABC (SOC) Limited

Date and signed at Auckland Park on the 9th day of November 2018.


Name in full: Madoda Mxakwe
Designation: Group Chief Executive Officer

For the Commission

Date and signed at Pretoria on the 7th day of December 2018.


TEMBINKOSI BONAKELE
COMPETITION COMMISSIONER

ANNEXURE "B"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD AT PRETORIA)

CT CASE NO: CR294Feb18

CC CASE NOS: 2011Nov5779 and 2015Dec0695

In the matter between:

In re

CC Case Nos: 2011Nov5779 and 2015Dec0695

THE COMPETITION COMMISSION

Applicant

And

SABC SOC LIMITED

Respondent



**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND SABC SOC LIMITED DATED 7 DECEMBER
2018**

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and SABC (SOC) Limited, signed on 7 December 2018 and presented for confirmation by the Competition Tribunal on 27 February 2019 (the "Consent Agreement"), is amended as follows:

1. AD PARAGRAPH 6.4 (ADMINISTRATIVE PENALTY)

1.1 The following paragraph is amended as follows:

The first instalment of R 3 980 724.42 (Three Million Nine Hundred And

Eighty Thousand Seven Hundred And Twenty Four Rand And Forty Two Cents) shall be made within 30 (thirty) days of the confirmation of the Consent Agreement as an order of the Tribunal and the remainder after every 6 months from the date of the first instalment.

2. AD PARAGRAPH 7.2.2 (ECONOMIC DEVELOPMENT FUND)

2.1 The following paragraph is amended as follows:

SABC undertakes to make 6 (six) equal contributions of **R2 966 274.33 (Two Million Nine Hundred and Sixty Six Thousand Two Hundred and Seventy Four Rand and Thirty Three Cents)** into the Economic Development Fund. The first contribution is payable within 3 (three) months from the date of confirmation of this Consent Agreement.

3. AD PARAGRAPH 7.2.9 (COMPLIANCE)

3.1 The following paragraph is inserted as follows:

All compliance reports and proof of payments relating to this matter shall be forwarded to the Commission at CartelsSettlements@compcom.co.za

4. 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.

 
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For SABC SOC Limited

Date and signed at ARICKLAND PARK on the ___ day of 27/2 2019.



NAME: MADODA MXAKWE

DESIGNATION: GROUP CHIEF EXECUTIVE OFFICER

For the COMMISSION

Date and signed at Pretoria on the 27 day of February 2019



NAME: TEMBINKOSI BONAKELE

DESIGNATION: COMPETITION COMMISSIONER